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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 284.

THE TOWN OF MENASHA AND THE CITY OF MENASHA, PLAINTIFFS IN ERROR,

vs.

ROWLAND G. HAZARD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

FILED OCTOBER 13, 1877.

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1 Circuit court of the United States, eastern district of Wisconsin.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss :

At a stated term of the circuit court of the United States of America for the eastern district of Wisconsin, begun and held, according to law, at the city of Milwaukee, on the first Monday (being the first day) of January, A. D. 1877—present, the honorable Thomas Drummond, circuit judge, presiding, and the honorable Charles E. Dyer, district judge; Henry Fink, marshal; Edward Kurtz, clerk—among other, the following proceedings were had, to wit:

ROWLAND G. HAZARD, PLAINTIFF,
vs.
THE TOWN OF MENASHA AND THE CITY OF MENASHA, defendants. } At law.

Be it remembered that heretofore, to wit, on the 14th day of September, A. D. 1875, came the plaintiff, by his attorneys, Messrs. Dixon, Hooker, Wegg & Noyes, and filed his præcipe for a summons against the town of Menasha, one of said defendants, in an action on money demand for the amount therein stated, as follows:

2 *Præcipe for summons.*

Circuit court of the United States of America for the eastern district of Wisconsin.

ROWLAND G. HAZARD, PLAINTIFF,
vs.
THE TOWN OF MENASHA, DEFENDANT.

Complaint served. Money demand.

Issue a summons in the above-entitled cause. Demand judgment damages for $735.00; interest on $35 from June 1st, 1874; on $350 from Dec. 1, 1874; & on $350 from June 1, 1875, at 7%, and premium on gold at current rate of exchange; returnable according to law.

DIXON, HOOKER, WEGG & NOYES,
Plaintiff's Attorneys.

To EDWARD KURTZ, *Clerk.*

And also filed his complaint to be served and bond for costs, approved by the clerk.

Whereupon a summons issued, returnable according to law, with said complaint annexed. Which summons and complaint are as follows:

3 Circuit court of the United States for the eastern district of Wisconsin.

ROWLAND G. HAZARD, PLAINTIFF,
vs.
THE TOWN OF MENASHA, DEFENDANT.

Summons on money demand. Complaint served.

The President of the United States of America to the above-named defendant:

You are hereby summoned and required to answer the complaint of the plaintiff in this action, which is filed in the office of the clerk of

this court, at Milwaukee, in said district, and a copy of which is herewith served upon you. And you are also required to file your answer thereto in said clerk's office in Milwaukee, and to serve a copy thereof on the attorneys of the plaintiff, whose names are subscribed hereto, at their office, in Milwaukee, Wis., within twenty days after the service of this summons on you, exclusive of the day of such service, and if you fail to answer the complaint as aforesaid, the plaintiff will take judgment against you for the sum of seven hundred and thirty-five dollars, with interest on $35 thereof from the 1st day of June, 1874, and with interest on $350 from the 1st day of December, 1874, and with interest on three hundred and fifty dollars thereof from the first day of June, in the year one thousand eight hundred and seventy-five, and the premium on gold at current rate on said sum of $735.00, besides the costs of this action. The marshal of said district is hereby commanded to serve this summons and make due return thereto.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the said eastern district of Wisconsin, this 14 day of September, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the 100th.

[SEAL.] EDWARD KURTZ, *Clerk.*

DIXON, HOOKER, WEGG & NOYES, *Attorneys.*

4 Served on the within-named J. D. Harris, clerk, & Andrew Fredericson, chairman of town of Menasha, by delivering to each, personally, a copy of this summons & complaint this 18th day of September, A. D. 1875.

C. S. HAMILTON, *Marshal,*
By EPHRAIM GIDDINGS, *Deputy.*

Fees: Service, 2, 4.00; copies, 23.60; travel, 6.60—$34.20.

5 *Complaint.*

United States circuit court, eastern district of Wisconsin.

ROWLAND G. HAZARD, PLAINTIFF,
against
THE TOWN OF MENASHA, DEFENDANT.

The above-named plaintiff, by Dixon, Hooker, Wegg & Noyes, his attorneys, respectfully shows to the court and alleges:

That the said plaintiff is a resident and citizen of the State of Rhode Island, and that the defendant is a corporation duly created and existing under the laws of the State of Wisconsin, and is located in the county of Winnebago, in the eastern district of Wisconsin, and is a citizen of the said State of Wisconsin.

6 And the said plaintiff, for a first cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant, being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 12, bearing date on said 1st day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay to the Wisconsin Central Railroad

Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant at the same time duly made, executed, and annexed thereto its interest warrant, or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of Dec., 1874, being six months' interest on bond No. 12 for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges upon information and belief, that thereafter the said bond, and the said interest-warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed, were for a valuable consideration duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of Dec., A. D. 1874, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendant, on account thereof, the said sum of thirty-five dollars in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of Dec., A. D. 1874.

And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 12, bearing date on said first day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed, and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of June, 1875, being six months' interest on bond No. 12, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest-warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff), by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of June, A. D. 1875, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendant, on account thereof, the said sum of thirty-five dollars in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of June, A. D. 1875.

7 And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant, being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 13, bearing date on the said 1st day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed, and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of Dec., 1874, being six months' interest on bond No. 13, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond, and the said interest-warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff), by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of Dec., A. D. 1874, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendant, on account thereof, the

said sum of thirty-five dollars in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of Dec., A. D. 1874.

And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant, being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 13, bearing date on said first day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed, and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of June, 1875, being six months' interest on bond No. 13, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest-warrant or coupon thereto annexed were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of June, A. D. 1875, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendant, on account thereof, the said sum of thirty-five dollars in gold, with interest thereon at the rate of seven per cent. per annum in gold, from the 1st day of June, A. D. 1875.

8 And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant, being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 14, bearing date on said 1st day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in

gold; and that the said defendant, at the same time, duly made, executed, and annexed thereto its interest warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of Dec., 1874, being six months' interest on bond No. 14, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest-warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon the said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff), by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of Dec., A. D. 1874, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendant, on account thereof, the said sum of thirty-five dollars, in gold, with interest thereon at the rate of seven per cent. per annum in gold, from the 1st day of Dec., A. D. 1874.

And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant, being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 14, bearing date on said first day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed, and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of June, 1875, being six months' interest on bond No. 14, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest-warrant or coupon thereto annexed were, for value received, duly delivered by said defendant to

said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of June, A. D. 1875, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendant, on account thereof, the said sum of thirty-five dollars in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of June, A. D. 1875.

9 And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant, being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 15, bearing date on said 1st day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed, and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35 00 in gold on the first day of Dec., 1874, being six months' interest on bond No. 15, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond, and the said interest-warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff), by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of Dec., A. D. 1874, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendant, on account thereof, the said sum of thirty-five dollars, in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of Dec., A. D. 1874.

And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant, being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 15, bearing date on said first day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed, and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of June, 1875, being six months' interest on bond No. 15, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest-warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff), by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of June, A. D. 1875, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendant, on account thereof, the said sum of thirty-five dollars, in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of June, A. D. 1875.

10 And the said plaintiff, for a separate and further cause of action, alleges that on or about the 1st day of June, A. D. 1871, the said defendant, being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 16, bearing date on said 1st day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay, to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed and

annexed thereto its interest warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold on the first day of June, 1874, being six months' interest on bond No. 16, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of June, A. D. 1874, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendant, on account thereof, the said sum of thirty-five dollars in gold, with interest thereon at the rate of seven per cent. per annum, in gold, from the 1st day of June, A. D. 1874.

And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant, being then and there duly authorized and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 16, bearing date on said first day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay, to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce, in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of Dec., 1874, being six months' interest on bond No. 16, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest-warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created

and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed, were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of Dec., A. D. 1874, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendant, on account thereof, the said sum of thirty-five dollars, in gold, with interest thereon at the rate of seven per cent. per annum, in gold, from the 1st day of Dec., A. D. 1874.

11 And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant, being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 16, bearing date on said 1st day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay, to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce, in the city of New York, together with interest thereon at the rate of seven per centum, payable semi annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of June, 1875, being six months' interest on bond No. 16, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest-warrant or coupon thereto annexed were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of June, A. D. 1875, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendant, on account thereof, the said sum of thirty-five dollars, in gold, with interest thereon at the rate of seven per cent. per annum, in gold, from the 1st day of June, A. D. 1875.

And the said plaintiff, for a separate and further cause of action,

alleges, that on or about the 1st day of June, A. D. 1871, the said defendant, being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 18, bearing date on said first day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay, to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce, in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed, and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of Dec., 1874, being six months' interest on bond No. 18, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest-warrant or coupon thereto annexed were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of Dec., A. D. 1874, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendant, on account thereof, the said sum of thirty-five dollars, in gold, with interest thereon at the rate of seven per cent. per annum, in gold, from the 1st day of Dec., A. D. 1874.

12 And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant, being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 18, bearing date on said 1st day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted and promised to pay to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce, in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed, and annexed thereto its interest warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National bank of Commerce, New York, $35.00 in gold, on the first day of June, 1875, being six months' interest on bond No. 18, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of June, A. D. 1875, and represented by said interest warrant or coupon; and that there is now justly due to the plaintiff from the said defendant, on account thereof, the said sum of thirty five dollars in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of June, A. D. 1875.

And the said plaintiff, for a separate and further cause of action, alleges that, on or about the 1st day of June, A. D. 1871, the said defendant, being then and there duly authorized and having lawful capacity and authority for that purpose, duly made and executed under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 19, bearing date on said first day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted and promised to pay to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce, in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed, and annexed thereto its interest warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold on the first day of Dec., 1874, being six months' interest on bond No. 19, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest warrant or

coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of Dec., A. D. 1874, and represented by said interest warrant or coupon; and that there is now justly due to the plaintiff from the said defendant, on account thereof, the said sum of thirty-five dollars in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of Dec., A. D. 1874.

13 And the said plaintiff, for a separate and further cause of action, alleges that on or about the 1st day of June, A. D. 1871, the said defendant, being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 19, bearing date on said 1st day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted and promised to pay to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof at the National Bank of Commerce, in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed, and annexed thereto its interest warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of June, 1875, being six months' interest on bond No. 19, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest warrant or coupon thereto annexed were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of June, A. D. 1875, and represented by said interest warrant or coupon; and that there is now justly due to the plaintiff from the said defendant, on account thereof, the said sum of thirty-five dollars in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of June, A. D. 1875.

And the said plaintiff, for a separate and further cause of action, alleges that on or about the 1st day of June, A. D. 1871, the said defendant, being then and there duly authorized and having lawful capacity and authority for that purpose, duly made and executed under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 37, bearing date on said first day of June, A. D. 1871, wherein and whereby it acknowledged itself to

be indebted and promised to pay to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce, in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed, and annexed thereto its interest warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold on the first day of Dec., 1874, being six months' interest on bond No. 37, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest warrant or coupon thereto annexed were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of Dec., A. D. 1874, and represented by said interest warrant or coupon; and that there is now justly due to the plaintiff from the said defendant, on account thereof, the said sum of thirty-five dollars in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of Dec., A. D. 1874.

14 And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 37, bearing date on said 1st day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce, in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed, and annexed thereto its interest warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold on the first day of June, 1875, being six months' interest on bond No. 37, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of June, A. D. 1875, and represented by said interest warrant or coupon; and that there is now justly due to the plaintiff from the said defendant on account thereof the said sum of thirty-five dollars in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of June, A. D. 1875.

And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant, being then and there duly authorized and having lawful capacity and authority for that purpose, duly made and executed under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 38, bearing date on said first day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce, in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant at the same time duly made, executed, and annexed thereto its interest warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin. will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of Dec., 1874, being six months' interest on bond No. 38, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest warrant or coupon thereto annexed were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of Dec., A. D. 1874, and represented by said interest warrant or coupon; and that there is now justly due to the plaintiff from the said defendant on account thereof the said sum of thirty-five dollars in gold, with interest thereon at the rate of

seven per cent. per annum in gold, from the 1st day of Dec., A. D. 1874.

15 And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 38, bearing date on said 1st day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce, in the city of New York, together with interest thereon at the rate of seven per centum payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed, and annexed thereto its interest warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of June, 1875, being six months' interest on bond No. 38, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest warrant or coupon thereto annexed were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of June, A. D. 1875, and represented by said interest warrant or coupon; and that there is now justly due to the plaintiff from the said defendant on account thereof the said sum of thirty-five dollars in gold, with interest thereon at the rate of seven per cent. per annum in gold, from the 1st day of June, A. D. 1875.

And the said plaintiff, for a separate and further cause of action, alleges that on or about the 1st day of June, A. D. 1871, the said defendant, being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 39, bearing date on said first day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce, in the city of New York, together with interest thereon at the rate of seven per centum payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed, and an-

nexed thereto its interest warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of Dec., 1874, being six months' interest on bond No. 39, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest warrant or coupon thereto annexed were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of Dec., A. D. 1874, and represented by said interest warrant or coupon; and that there is now justly due to the plaintiff from the said defendant on account thereof the said sum of thirty-five dollars in gold, with interest thereon at the rate of seven per cent. per annum in gold, from the 1st day of Dec., A. D. 1874.

16 And the said plaintiff, for a separate and further cause of action, alleges that on or about the 1st day of June, A. D. 1871, the said defendant, being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 39, bearing date on said 1st day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay, to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce, in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed, and annexed thereto its interest warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of June, 1875, being six months' interest on bond No. 39, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond, and the said interest warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the

same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of June, A. D. 1875, and represented by said interest warrant or coupon; and that there is now justly due to the plaintiff from the said defendant, on account thereof, the said sum of thirty-five dollars in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of June, A. D. 1875.

17 Wherefore the said plaintiff demands judgment against the said defendant for the sum of seven hundred & thirty-five dollars, with interest thereon at the rate of seven per cent. per annum, as follows, viz: on thirty-five dollars thereof from the first day of June, 1874; on three hundred & fifty dollars thereof from the first day of December, 1874; and on three hundred and fifty dollars thereof from the first day of June, 1875, together with the premium on gold at the current rate of exchange, besides the costs of this action.

DIXON, HOOKER, WEGG & NOYES,
Plff's Att'ys.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

Geo. H. Noyes, being duly sworn, says that he is one of the attorneys for the plaintiff in this action, and makes this verification on his behalf: that the matters stated in the foregoing complaint are, as this affiant is informed and believes, true; that the reason why this verification is not made by said plaintiff is that said plaintiff does not reside within the county of Milwaukee, which is the county where deponent resides, and that the action is founded upon written instru for the payment of money only, to wit, interest warrants or coupons, representing

18 interest on the bonds mentioned in said complaint, and such instruments are in the possession of this deponent, & that the information and belief upon which he makes this verification are derived from an examination of a copy of one of said bonds mentioned in the complaint, and from the said interest warrants or coupons, and from correspondence as attorneys of said plaintiff.

GEO. H. NOYES.

Subscribed & sworn to before me this 11th day of September, 1875.
EDWARD KURTZ, *Clerk.*

OCTOBER 22, 1875.

This day came the defendant, by its attorney, Mr. Moses Hooper, and filed its answer, as follows:

Answer of defendant.

United States circuit court, eastern district of Wisconsin.

ROWLAND G. HAZARD
vs.
THE TOWN OF MENASHA.

Now comes the defendant, by Moses Hooper, its attorney, and for answer to plaintiff's complaint herein, alleges:

First. That the plaintiff is not, as defendant is informed and believes,

the owner or holder of any of the bonds or interest warrants described in plaintiff's complaint; that same never were, as defendant is informed and believes, sold, transferred, or delivered to the plaintiff by
19 any person, but that same are, as defendant is informed and believes, now owned, held, and possessed by persons who are residents of this State of Wisconsin, and have been so held and possessed for more than one year last passed.

And for further and second defense, that on the 10th day of May, A. D. 1870, the Portage, Winnebago and Superior Railroad Company made to the town of Menasha a proposition pursuant to chapter 126 of laws of Wisconsin for year 1869, which was in words, characters, and figures as appears by Exhibit A, hereto annexed and made a part of this answer; that on the 4th of June, A. D. 1870, a vote was had in town of Menasha upon said proposition, which was claimed by said company to be in pursuance of said law.

That the officers of said town pretended to issue the bonds specified in complaint in pursuance of said vote of said town upon said proposition, and in pursuance of such proposition, and upon no other pretended authority whatever, and not otherwise than as provided by said proposition and the statutes referred to in the complaint.

That no road was ever built by said Wisconsin Central Railroad Company, or by the Portage, Winnebago and Superior Railroad, or
20 by any other road consolidated to form same, from block 3 in Jones' plat in town of Neenah, nor from any place in town of Menasha, agreed upon by the authority of said town, to the Wolf River. But, on the contrary, contrary to the terms of said proposition, the said Wisconsin Central Railroad Company adopted as a part of their line proposed to be built by them in their proposition aforesaid the line of road of the Chicago & Northwestern Railway Company, and do not propose for the extent of same mainly to build, have, or maintain between the points specified in said proposition any independant line of road, but have adopted the line unused for that distance, the track and road of the Chicago and Northwestern Railway Company, and that said proposition has, since the 10th day of May, 1870, been upon the files, and a part of the files and records, of said town of Menasha, open to the inspection of all persons.

That said bonds recite upon their face that they are issued in pursuance of a vote of the legal voters of said town on the 4th day of June, 1870, under and by virtue of the act specified in complaint, as defendant is informed and believes.

That no stock of said company was ever issued to or delivered to said town, & that no dividend on stock was ever paid to said town,
21 and that said town never voted upon any stock of said company, and that no certificate of such stock was ever deposited in said National Bank of Commerce for the defendant, as defendant is informed and believes.

And, for a third defence, that each of said bonds contains upon its face a condition that "this bond shall be valid only when it is thereon duly certified that it has been duly certified—that the conditions upon which it was voted, issued, and deposited by said town have been performed," and that such provision has reference to the said proposition, copy of which is marked A; that no certificate such as is specified in said bond, or such as is specified in said proposition, was ever written, printed, signed, or made upon said bonds, or either of them, as the defendant is informed and believes.

And that said bonds were not, nor was either of them, ever deposited

in the National Bank of Commerce of New York, or ever in said bank, as this defendant is informed and believes.

And that there never was filed in said bank a certificate signed by the chief officers of said railroad company, or the board of supervisors of said town, or secretary of state of Wisconsin, that the iron had been laid upon the track of road, and cars had been run over the same through from the depot on Doty's Island, or in the town of Neenah
22 or the town of Menasha, to the Wolf River, as the defendant is informed and believes.

And, for a further defence, that said proposition provides that said bonds and the coupons or interest warrants thereon shall, when due, be receivable for taxes to be collected in said town; and said bonds provide each upon its face that "this bond and the coupons or interest warrants thereon shall, when due, be receivable for taxes to be collected in said town," meaning the town of Menasha; which provision in said proposition and bond is contrary to the law authorizing said bond to be issued, and contrary to the laws of the State of Wisconsin, as defendant is informed and believes.

And, for a fifth defence, that on or about the first day of November, A. D. 1871, the bonds specified in complaint herein were signed by Fred. Schnelling, chairman of board of supervisors of said town, and D. J. Ryan, clerk of said town, and on or about same day were delivered by said Fred. Schnelling to one Gardner Colby at Milwaukee, he then being president of the Wisconsin Central Railroad Company, and that none of said bonds were signed or executed or delivered to any person or company whatever before said first day of November, A. D. 1871, as defendant is informed and believes.

23 That on the 15th day of July, A. D. 1871, one Publias V. Lawson, in behalf of himself as a tax-payer, and of all other tax-payers of said town, commenced an action in the Winnebago County circuit court of Wisconsin to restrain said town of Menasha and the officers thereof, and said Schnelling and Ryan, from signing, or issuing or delivering to any person, company, or corporation whatever any of said bonds, and to restrain said Wisconsin Central Railroad and its officers, agents, and employees, and its assigns and successors, from negotiating, selling, transferring, or delivering, or pledging, or hypothecating to any person, company, or corporation whatever, any of said bonds, for the following among other reasons, to wit:

That contrary to said stipulation, proposition, and agreement, the successor to said Portage, Winnebago, and Superior Railroad Company, to wit, the Wisconsin Central Railroad Company, have not located or constructed their railroad from said block 3, and do not propose or intend so to locate or construct same, but that they have located and are constructing same from an entirely different point, and from a point not in the town of Neenah.

Because said bonds provide that the same and coupons thereto attached shall, when due, be receivable for taxes to be collected in said town, which provision, this plaintiff alleges, is not authorized by
24 the chapter 126, general laws 1869. Because, as the fact is, the said Wisconsin Central Railroad Company have adopted as a part of their line proposed to be built by them in said proposition of May 10th, 1870, the line of railroad of the Chicago & Northwestern Railway Company, and do not propose for the extent of some miles to build, have or maintain, between the points specified in said proposition, any independant line of road, but to adopt line and use for that distance the road track of the Northwestern Railway Company.

And that in such action an order was duly made by George Gary, county judge of Winnebago County, acting as court commissioner of said court, and duly served upon said town and upon said Schnellen and other supervisors of said town, and upon Ryan, town clerk of said town, restraining them and each of them from signing, or issuing, or delivering to any person, company, or corporation whatever any one of said bonds, and which order was so served upon all said parties, except said Wisconsin Central Railroad Company before the signing, issuing, or delivering of any of said bonds, and that in said action an order was duly made by said Gary, acting as such court commissioner, restraining all of said officers of said town, and the secretary of state of Wisconsin, and their successors in office, from signing, issuing, or delivering
25 to any person, company, or corporation whatever, any certificate that the iron has been laid upon the track of the Wisconsin Central Railroad, or that cars had been run over the same through from Doty's Island, in the town of Neenah, to the Wolf River, and from signing, issuing, making, or delivering to any person, company, or corporation whatever, any certificate of any such fact, and from making any certificate that the conditions upon which any bonds voted to said Wisconsin Central Railroad Company by said town were voted, and issued, and deposited by said town had been performed by said railroad company, and from making any certificate whatever to give validity to said bonds, or to indicate that the conditions on which same were voted had been performed; and which order was duly served on said secretary of state, and all of said town officers, before any certificate was made, as required in and by said bonds, or in & by said proposition of the performance of the conditions upon which it was issued or deposited, either by the officers of said town, or by the secretary of state of Wisconsin, and this defendant is informed and believes.

That in such action an order was duly made by George Garey, as such court commissioner, restraining the Wisconsin Central Railroad Company from receiving, taking, holding, delivering, selling,
26 conveying or transfer'ing to any person or persons, company or corporation, whatever any of said bonds, which said order was duly served upon said Wisconsin Central Railroad Company before the said company had conveyed, or transfer'ed, or delivered any one of said bonds to any person, company or corporation whatever, as this defendant is informed and believes, and that whatever title the plaintiffs have in such bonds came through delivery and sale of said bonds by said railroad company in violation of said injunctional order. That all of such orders are still in force, and not in any particular vacated, or modified, or set aside.

That said action is still pending in said Winnebago County circuit court and not finally determined. That all said orders were duly entered of record in said cause at time of the making.

That in December, 1872, the officers of town of Menasha attempted to collect a special railroad tax in same warrant with the general tax of 1872, to pay the coupons on said bonds which had become due, and that on the 18th day of February, 1873, they were restrained from collecting such tax by order made in said cause of Lawson, plaintiff, by Hon. D. J. Pulling, judge of said Winnebago County circuit court, on account that said bonds had been issued in violation of said injunctional orders.
27 That such last order was substantially as follows: That any and all the officers, agents, and servants of the town of Menasha do refrain from levying or assessing any tax, and from collecting any tax already assessed or levied or pretended to be assessed or levied, for

or on account of or to pay any principal or interest of or upon any bonds issued or purporting to be issued, or voted to be issued, to or for the use of the Wisconsin Central Railway Company under or by virtue of an election pretended to be held in the town of Menasha on the 4th day of June, 1870, and also that they do refrain from paying any principal or interest of or upon any such bond or on account of said vote to any person whatever. And that said order is still in full force, and not in any particular vacated, modified, or set aside, and which order was entered of record in said cause at making thereof.

That in said action the town of Menasha and all the supervisors of said town and town clerk of said town, and the Wisconsin Central Railroad Company, and secretary of state of Wisconsin, were made parties defendant and duly served with process therein.

Wherefore defendant prays judgment of this court that the complaint of plaintiff herein be dismissed on the merits with costs to defendant.

October 13, 1875.

MOSES HOOPER,
Defendant's Attorney.

28 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, Winnebago County, ss:

Andrew Fredericksen, being duly sworn, on his oath deposes and says that he is chairman of the board of supervisors of the town of Menasha; that he has heard read the foregoing answer herein, and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and as to be true.

A. FREDERICKSEN.

Subscribed and sworn to before me this 19th day of October, A. D. 1875.

ELBRIDGE SMITH,
U. S. Commissioner Eastern Dist. Wis.

Exhibit A of answer of town of Menasha.

Proposition by the Portage, Winnebago and Superior Railroad Company to the town of Menasha.

The Portage, Winnebago and Superior Railroad Company of the State of Wisconsin, a corporation duly incorporated and organized under and in pursuance of the laws of said State, and authorized to locate, construct and maintain and operate a railroad with one or more tracks from Doty's Island, situated in the towns of Neenah and Menasha, in the county of Winnebago, northwesterly, via the towns of Weyanwega,
Waupaca, Amerherst, and Stevens' Point to Bayfield, and
29 thence to Superior, Lake Superior, and requiring the aid of the said towns of Menasha and Neenah each in the sum of fifty thousand dollars in the construction of that portion of its said line of road as lies between said Doty's Island and the Wolf River, and being thereto authorized by chapter 126 of the general laws of 1869, entitled "An act to authorize certain counties, towns, cities and villages to aid in the construction of the Land Grant Railroad from Portage City and from Doty's Isand to Lake Superior," submits to the said town of Menasha the following proposition, to wit:

First. That in consideration of the construction by said company of a single track railroad from block 3 in Jones plat, the said town of Nee

nah on Doty's Island to the Wolf River, and of five hundred full paid shares of the capital stock of said company, of one hundred dollars each, the said town of Menasha shall pay to said company, or its assigns, the sum of fifty thousand dollars, at the time and in the manner hereinafter provided.

Second. That said town of Menasha shall secure to this company the payment of the said sum of fifty thousand dollars in its corporate bonds to be issued on that amount, to run twenty years from the date of issue, with interest thereon at the rate of seven per cent., payable semi-
30 annually, principal and interest payable in gold at the National Bank of Commerce of the city of New York; that the said bonds, besides the usual conditions, shall provide that the same and the coupons or interest warrants thereon shall, when due, be receivable for taxes to be collected in said town, and that there shall be annually levied upon the property in said town a tax sufficient to pay the interest upon said bonds, and to raise a sinking fund to pay the principal thereof when the same shall become due and payable, in the manner provided by said chapter 126 of the general laws of 1869; and shall also further provide that said bonds shall be valid only when it is thereon duly certified that the conditions upon which they were voted, issued, and deposited by said town have been performed. The said bonds and coupons or interest-warrants attached shall be engraved or printed in the usual form and style, and in such denominations (not less than one nor more than ten hundred dollars) as shall be approved by this company, and the cost thereof shall be paid by the treasurer on the order of the chairman of said town.

Third. That the proper officers of said town shall issue said bonds as required by law, and on notice being received by the chairman of
31 the board of supervisors of said town from the said National Bank of Commerce of New York that this company has deposited therein to the credit of said town the said five hundred full paid shares of its capital stock, he shall deposit or cause to be deposited in said bank all of said bonds, with instructions to said bank or its officers to hold the same on deposit in trust for said town, until such time as there shall be filed in said bank a properly authenticated certificate signed by the chief officers of this company, and the board of supervisors of said town, or the secretary of state of this State, that the iron has been laid upon the track of said road, and cars have been run over the same through from the depot on Doty's Island, or in said town, to the Wolf River, when the said bonds shall become the absolute property of and be held by said bank subject to the order of this company or its assigns, and which certificate shall authorize and require the president of said bank to certify upon the back of each of said bonds that the conditions upon which the said bonds were voted, issued and deposited by said town have been performed, and in case this company fail to comply with the said conditions, the said bonds shall be returned to said town on the demand of the authorities thereof.

Fourth. That in consideration of the acceptance of this propo-
32 sition and the fulfillment of the terms thereof by the said town, this company will, without unnecessary delay, issue to and deposit to the credit of said town, in the said National Bank of Commerce of New York, five hundred full paid shares (of one hundred dollars each) of its capital stock, which is to be delivered to said town at the time of the delivery of said bonds to this company, and that on the acceptance of this proposition, and as soon as the right of way and depot grounds have been secured by this company; this company will commence the

construction of the track of said portion of its road, and will have the same completed, and the iron laid thereon, and cars run over the same within one year from the time the bonds of said town have been issued and deposited in said bank as aforesaid; provided, however, that the like proposition submitted by this company to the town of Neenah shall be accepted and its conditions fulfilled by said town.

Fifth. In the event the said town of Neenah fail to accept and fulfill the terms of said proposition so as aforesaid submitted to it, this company further proposes to said town of Menasha that if the required additional sum of fifty thousand dollars shall be furnished to this company by individual subscription to stock in like amount, and satisfactorily secured to be paid, the depot of this company shall be located, and its road constructed therefrom, at such place in said town and on such route as may be agreed upon between this company and the authorities of said town, and under the foregoing proposition as hereby qualified.

33

In witness whereof the Portage, Winnebago and Superior Railroad Company has caused these presents to be signed by its president and sealed with its seal this the 10th day of May, A. D. 1870.

[SEAL.] (Signed) GEO. REED,
President P. W. & S. R. R. Co.

Motion to make the city of Menasha a party defendant.

FEBRUARY 2, 1876.

This day came the defendant by its counsel, and moved the court that the city of Menasha be made a defendant herein, and that the plaintiff be directed to amend his summons and complaint herein so as to make the said city defendant herein, and to serve the same on said city, for reasons filed, and said motion being argued by Mr. Sutherland for the defendant, and Mr. Hooker for the plaintiff, the court took time to consider of the same.

Order granting motion to make city of M. a party.

FEBRUARY 25, 1876.

This day came the parties by their counsel, and on consideration of the motion of the defendant that the city of Menasha be made a defendant herein, &c., it is ordered by the court that said motion be granted, and that the plaintiff amend his summons and complaint accordingly within twenty days, and serve the same upon the said city of Menasha.

34

MARCH 9, 1876.

This day came the plaintiff by his attorneys, and filed his amended complaint against The Town of Menasha and The City of Menasha, defendants, together with his præcipe for a summons pursuant thereto; which præcipe is as follows:

Præcipe for summons pursuant to amended complaint.

Circuit court of the United States of America for the eastern district of Wisconsin.

ROWLAND G. HAZARD, PLAINTIFF,
vs.
THE TOWN OF MENASHA AND THE CITY OF MENASHA, defendants.

Money demand.

Demand judgment for $735.00 with interest at 7 per cent. on $35.00 from June 1, 1874, on $350.00 from Dec. 1, 1874, & on $350.00 from June 1, 1875, with exchange on gold.

Complaint served.

Issue a summons in the above-entitled cause returnable according to law.

DIXON, HOOKER, WEGG & NOYES,
Plaintiff's Attorneys.

To EDWARD KURTZ, *Clerk.*

Whereupon a summons issued against said defendants returnable according to law, with said amended complaint annexed, as follows:

35 Circuit court of the United States for the eastern district of Wisconsin.

ROWLAND G. HAZARD, PLAINTIFF,
vs.
THE TOWN OF MENASHA AND THE CITY OF Menasha, defendants.

Summons on money demand. Amended complaint served.

The President of the United States of America to the above-named defendant:

You are hereby summoned and required to answer the amended complaint of the plaintiff in this action, which is filed in the office of the clerk of this court, at Milwaukee, in said district, and a copy of which is herewith served upon you. And you are also required to file your answer thereto in said clerk's office, at Milwaukee, and to serve a copy thereof on the attorneys of the plaintiff, whose names are subscribed hereto, at their office, in Milwaukee, Wis., within twenty days after the service of this summons on you, exclusive of the day of such service, and if you fail to answer the complaint as aforesaid the plaintiff will take judgment against you in the sum of seven hundred & thirty-five dollars, with interest on $35 thereof from the first day of June, in the year one thousand eight hundred and seventy-four, and with interest on $350 thereof from the first day of December, 1874, and with interest on $350 thereof from the first day of June, 1875, and the premium on gold at current rate on said $735, besides the costs of this action. The marshal of said district is hereby commanded to serve this summons and make due return thereto.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the said eastern district of Wisconsin, this 9th day of March, in the year of our Lord one

thousand eight hundred and seventy-six, and of the Independence of the United States the

[SEAL.] EDWARD KURTZ, *Clerk.*

DIXON, HOOKER, WEGG & NOYES,
Attorneys.

36 Served on the within-named The Town of Menasha and The City of Menasha by showing this summons and complaint, and by delivering a copy thereof to Andrew Fredericksen, chairman of said town, and to P. V. Lawson, mayor of said city, this 13th day of March, A. D. 1876.

C. S. HAMILTON, *Marshal,*
By EPHRAIM GIDDINGS,
Deputy Marshal.

Fees: Service, 4.00; copies, 23.60; travel, 6.00—$33.60.

37 *Amended complaint.*

United States circuit court, eastern district of Wisconsin.

ROWLAND G. HAZARD, PLAINTIFF,
against
THE TOWN OF MENASHA AND THE CITY OF Menasha, defendants.

The above-named plaintiff, by Dixon, Hooker, Wegg & Noyes, his attorneys, respectfully shows to the court and alleges in this, his amended complaint, that the plaintiff is a resident and citizen of the State of Rhode Island, and that the said defendants and each of them are corporations duly created and existing under the laws of the State of Wisconsin, located in the county of Winnebago, in the eastern district of Wisconsin, and are citizens of the said State of Wisconsin.

And the said plaintiff further alleges that by an act of the legislature of the State of Wisconsin, entitled "An act to incorporate the city of Menasha," approved March 5, 1874, by which said act the said defendant city was incorporated, it was provided, among other things, that in all suits pending or which should thereafter be commenced against said defendant Town of Menasha, in reference to *to* any existing liability
38 of said town, the said City of Menasha might be made a party defendant, and that if any judgment should be rendered therein against the said town the same should also be rendered against the said city.

And the plaintiff further alleges that on the 25th day of February, A. D. 1876, in the United States circuit court for the eastern district of Wisconsin, in this suit, originally brought against the said Town of Menasha alone, an order was made by said court that the City of Menasha be made a party defendant in said suit, and that a summons and complaint, so amended as to make said city a party defendant therein, be served upon the said City of Menasha.

39 And the said plaintiff, for a first cause of action, alleges that on or about the 1st day of June, A. D. 1871, the said defendant, The Town of Menasha, being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 12, bearing date on said 1st day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay to the Wiscon-

sin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed and annexed thereto its interest warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of Dec., 1874, being six months' interest on bond No. 12, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges upon information and belief, that thereafter the said bond, and the said interest warrant or coupon thereto annexed, were, for value received, duly delivered by said defendants to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff), by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of Dec., A. D. 1874, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendants on account thereof, the said sum of thirty-five dollars in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of Dec., A. D. 1874.

And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant town, being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 12, bearing date on said first day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed and annexed thereto, its interest-warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of June, 1875, being six months' interest on bond No. 12, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest-warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of June, A. D. 1875, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendants, on account thereof, the said sum of thirty-five dollars in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of June, A. D. 1875.

40 And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant town, being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 13, bearing date on said 1st day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce, in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of Dec., 1874, being six months' interest on bond No. 13, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest-warrant or coupon thereto annexed were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of Dec., A. D. 1874, and represented by said interest-warrant or coupon; and that there is now

justly due to the plaintiff from the said defendants, on account thereof, the said sum of thirty-five dollars in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of Dec., A. D. 1874.

And the said plaintiff, for a separate and further cause of action, alleges that on or about the 1st day of June, A. D. 1871, the said defendant town, being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 13, bearing date on said first day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce, in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer at the National Bank of Commerce, New York, $35.00 in gold on the first day of June, A. D. 1875, being six months' interest on bond No. 13, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest-warrant or coupon thereto annexed were for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of June, A. D. 1875, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendants, on account thereof, the said sum of thirty-five dollars in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of June, A. D. 1875.

41 And the said plaintiff, for a separate and further cause of action, alleges that on or about the 1st day of June, A. D. 1871, the said defendant town, being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 14, bearing date on said 1st day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay, to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce

in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed, and annexed thereto, its interest warrant or coupon, of which the following is a copy, viz:

$35,00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of Dec., 1874, being six months' interest on bond No. 14, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond, and the said interest-warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff), by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of Dec., A. D. 1874, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendants, on account thereof, the said sum of thirty-five dollars, in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of Dec., A. D. 1874.

And the said plaintiff, for a separate and further cause of action, alleges that on or about the 1st day of June, A. D. 1871, the said defendant town, being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 14, bearing date on said first day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay, to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed, and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of June, 1875, being six months' interest on bond No. 14, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest-warrant or coupon thereto an-

nexed were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of June, A. D. 1875, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendants on account thereof the said sum of thirty-five dollars, in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of June, A. D. 1875.

42 And the said plaintiff, for a separate and further cause of action, alleges that on or about the 1st day of June, A. D. 1871, the said defendant town being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond, numbered 15, bearing date on said 1st day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed, and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of Dec., 1874, being six months' interest on bond No. 15, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond, and the said interest-warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of Dec., A. D. 1874, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendants on account thereof the said sum of thirty-five dollars, in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of Dec., A. D. 1874.

And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant town being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond, numbered 15, bearing date on said first day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted and promised to pay to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of June, 1875, being six months' interest on bond No. 15, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest-warrant or coupon thereto annexed were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of June, A. D. 1875, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendants on account thereof the said sum of thirty-five dollars in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of June, A. D. 1875.

43 And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant town being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond, numbered 16, bearing date on said 1st day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay, to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made,

executed and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of June, 1874, being six months' interest on bond No. 16, for one thousand dollars.

FR. SCHNELLEN,
Chairman.
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of June, A. D. 1874, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendants on account thereof the said sum of thirty-five dollars, in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of June, A. D. 1874.

And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant town being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond, numbered 16, bearing date on said first day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold, and that the said defendant, at the same time, duly made, executed and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of Dec., 1874, being six months' interest on bond No. 16, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest-warrant or coupon thereto annexed were, for value received, duly delivered by said defendant to said

Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of Dec., A. D. 1874, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendants on account thereof the said sum of thirty-five dollars, in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of Dec., A. D. 1874.

44 And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant town being then and there duly authorized and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond, numbered 16, bearing date on said 1st day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay, to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of June, 1875, being six months' interest on bond No. 16, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond, and the said interest-warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of June, A. D. 1875, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendants on account thereof the said sum of thirty-five dollars, in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of June, A. D. 1875.

And the said plaintiff, for a separate and further cause of action, al-

leges, that on or about the 1st day of June, A. D. 1871, the said defendant town being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond, numbered 18, bearing date on said first day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay, to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and the said defendant, at the same time, duly made, executed and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of Dec., 1874, being six months' interest on bond No. 18, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest-warrant or coupon thereto annexed were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of Dec., A. D. 1874, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendants on account thereof the said sum of thirty-five dollars, in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of Dec., A. D. 1874.

45 And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant town being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond, numbered 18, bearing date on said 1st day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay, to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed, and annexed thereto its interest warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town or Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of June, 1875, being six months' interest on bond No. 18, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond, and the said interest warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of June, A. D. 1875, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendants on account thereof, the said sum of thirty-five dollars, in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of June, A. D. 1875.

And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant town being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond, numbered 19, bearing date on said first day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay, to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed, and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of Dec., 1874, being six months' interest on bond No. 19, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest-warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon the said railroad company negotiated and

put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of Dec., A. D. 1874, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendants on account thereof the said sum of thirty-five dollars, in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of Dec., A. D. 1874.

46 And the said plaintiff, for a separate and further cause of ac action, alleges that on or about the 1st day of June, A. D. 1871, the said defendant town being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond, numbered 19, bearing date on said 1st day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay, to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of June, 1875, being six months' interest on bond No. 19, for one thousand dollars.

FR. SCHNELLEN, *Commissioner.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond, and the said interest-warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said Railroad Company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of June, A. D. 1875, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendants on account thereof the said sum of thirty-five dollars in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of June, A. D. 1875.

And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defend-

ant town being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 37, bearing date on said first day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay, to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce, in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant at the same time duly made, executed, and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer at the National Bank of Commerce, New York, $35.00 in gold, on the first day of Dec., 1874, being six months' interest on bond No. 37, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest-warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of Dec., A. D. 1874, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendants on account thereof the said sum of thirty-five dollars, in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of Dec., A. D. 1874.

47 And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant town being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond, numbered 37, bearing date on said 1st day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay, to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed and annexed thereto its interest warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of June, 1875, being six months' interest on bond No. 37, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond, and the said interest warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of June, A. D. 1875, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendants on account thereof the said sum of thirty-five dollars, in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of June, A. D. 1875.

And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant town being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond, numbered 38, bearing date on said first day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay, to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of Dec., 1874, being six months' interest on bond No. 38, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest-warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and

before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of Dec., A. D. 1874, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendants on account thereof the said sum of thirty-five dollars, in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of Dec., A. D. 1874.

48 And the said plaintiff, for a separate and further cause of action, alleges, that on or about the 1st day of June, A. D. 1871, the said defendant town being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond, numbered 38, bearing date on said 1st day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay, to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.]

The town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of June' 1875, being six months' interest on bond No. 38, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond, and the said interest-warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of June, A. D. 1875, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendants on account thereof, the said sum of thirty-five dollars, in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of June, A. D. 1875.

And the said plaintiff, for a separate and further cause of action, alleges that on or about the 1st day of June, A. D. 1871, the said de-

fendant town being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 39, bearing date on said first day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay, to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed and annexed thereto its interest-warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The Town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of Dec., 1874, being six months' interest on bond No. 39, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond and the said interest-warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of Dec., A. D. 1874, and represented by said interest-warrant or coupon; and that there is now justly due to the plaintiff from the said defendants on account thereof, the said sum of thirty-five dollars, in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of Dec., A. D. 1874.

49 And the said plaintiff, for a separate and further cause of action, alleges that on or about the 1st day of June, A. D. 1871, the said defendant town being then and there duly authorized, and having lawful capacity and authority for that purpose, duly made and executed, under its corporate seal, signed by the chairman of its board of supervisors and its town clerk, its certain negotiable bond numbered 39, bearing date on said 1st day of June, A. D. 1871, wherein and whereby it acknowledged itself to be indebted, and promised to pay to the Wisconsin Central Railroad Company, or bearer, the sum of $1,000 in twenty years from the date thereof, at the National Bank of Commerce in the city of New York, together with interest thereon at the rate of seven per centum, payable semi-annually, principal and interest to be paid in gold; and that the said defendant, at the same time, duly made, executed, and annexed thereto, its interest warrant or coupon, of which the following is a copy, viz:

$35.00.] [Gold.

The Town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold on the first day of June, 1875, being six months' interest on bond No. 39, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

And the said plaintiff alleges, upon information and belief, that thereafter the said bond, and the said interest warrant or coupon thereto annexed, were, for value received, duly delivered by said defendant to said Wisconsin Central Railroad Company, a corporation duly created and organized under and by virtue of the laws of the said State of Wisconsin; that thereupon said railroad company negotiated and put the same into circulation. And the said plaintiff alleges that afterwards, and before the commencement of this action, the said bond and interest-warrant or coupon thereto annexed were, for a valuable consideration, duly transferred and delivered to him (said plaintiff) by the owner and bearer thereof, and that he is now the lawful owner and holder of the same; that the said defendant has not paid the semi-annual interest maturing upon said bond on the 1st day of June, A. D. 1875, and represented by said interest warrant or coupon; and that there is now justly due to the plaintiff from the said defendants on account thereof the said sum of thirty-five dollars, in gold, with interest thereon at the rate of seven per cent. per annum in gold from the 1st day of June, A. D. 1875.

50 Wherefore the said plaintiff demands judgment against the said defendants for the sum of seven hundred & thirty-five dollars, with interest thereon at the rate of seven per cent. per annum, as follows, viz: On thirty-five dollars thereof from the first day of June, 1874; on three hundred & fifty dollars thereof from the 1st day of December, 1874, and on three hundred & fifty dollars thereof from the first day of June, 1875, together with the premium in gold at the current rate of exchange, besides the costs of this action.

DIXON, HOOKER, WEGG & NOYES,
Pl'ff's Att'ys.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

Geo. H. Noyes, being duly sworn, says that he is one of the attorneys for the plaintiff in this action, and makes this verification on his behalf; that the matters stated in the foregoing complaint are, as this affiant is informed and belives, true, that the reason why this verification is not made by said plaintiff is that said plaintiff does not reside within the county of Milwaukee, which is the county where deponent resides, and that the action is founded upon written instruments for the payment of money only, to wit, interest warrants or coupons representing interest on the bonds mentioned in said complaint, and such instruments
51 are in the possession of this deponent, & that the information and belief upon which he makes this verification are derived from an examination of a copy of one of said bonds mentioned in the complaint, and from the said interest warrants or coupons, and from the records of said court and the statutes of the State of Wisconsin, and from correspondence as attorneys of said plaintiff.

GEO. H. NOYES.

Subscribed and swofn to before me this 8th day of March, 1876.
EDWARD KURTZ, *Clerk.*

JUNE 1, 1876.

This day came the defendant, The City of Menasha, by its attorney, Mr. E. P. Smith, and filed its demurrer, as follows:

Demurrer of City of Menasha.

United States circuit court, eastern district of Wisconsin.

ROWLAND G. HAZARD, PL'FF,
against
THE TOWN OF MENASHA AND THE CITY OF Menasha, def'ts.

The City of Menasha, one of the above-named defendants, by E. P. Smith, its attorney, demurs to the complaint herein as to each alleged cause of action stated therein, and from grounds of its demurrer states that it appears on the face of the complaint—

52 1. That the court has no jurisdiction of the person of this defendant.

2. That several causes of action have been improperly united.

3. That the complaint does not state facts sufficient to constitute a cause of action against said defendant.

E. P. SMITH,
Att'y for said Def't.

JUNE 29, 1876.

Substitution of Ephraim Mariner, as attorney for the City of Menasha, filed.

Order overruling demurrer of city.

JULY 3, 1876.

This day came the parties, by their counsel, and by consent it is ordered by the court that the demurrer of the defendant, The City of Menasha, to the complaint herein, be, and hereby is, overruled, and that said defendant answer said complaint by the first day of September next.

SEPTEMBER 6, 1876.

This day came the defendant, The City of Menasha, by its attorney, Mr. Mariner, and filed its answer, as follows:

Answer of the City of Menasha.

United States circuit court, eastern district of Wisconsin.

ROWLAND G. HAZARD, PLAINTIFF,
against
THE CITY OF MENASHA, IMPL'D WITH TOWN OF Menasha, defendants.

53 The defendant, The City of Menasha, by E. Mariner, its attorney, for answer to the plaintiff's amended complaint, states:

That it has no knowledge nor information sufficient to form a belief whether the plaintiff is a resident & citizen of the State of Rhode Island, but it admits that this defendant was incorporated by the act referred to in said complaint, & that it is thereby provided for impleading this defendant upon any existing liability of the town of Menasha as in said

complaint alleged; and that an order was made by this court impleading this defendant as stated by the plaintiff, but this defendant avers that by section 12, of chapter six of said act of incorporation, it is provided that no action shall be maintained by any person against the city of Menasha upon any claim or demand until such person shall have first presented his claim or demand to the common council for allowance; that the plaintiff has not presented the claim alleged in his complaint to said common council for allowance. This defendant, further answering, states that this defendant's liability for such indebtedness of said town of Menasha is limited by said act of incorporation to three-fourths thereof, and that in the event of a recovery by the plaintiff against this defendant upon his alleged claim judgment against this defendant should not be rendered for more than three-fourths of his said claim.

54 And for a further and separate defense, this defendant, further answering on information and belief, denies that the town of Menasha had lawful capacity to make the several bonds referred to in plaintiff's complaint and the interest warrants set out therein, or any of them.

And this defendant, on information and belief, denies that said town of Menasha did, for a good and valuable consideration, deliver said bonds and interest warrants to the Wisconsin Central Railroad Company, or that the plaintiff is the lawful holder and owner of the same for a good and valuable consideration, but states, on information and belief, that the same are owned by persons or corporations citizens of the State of Wisconsin; and this defendant, further answering, denies on information and belief that the said bonds are negotiable, and is informed and believes that the same were signed by the officers of said town without authority, and that the plaintiff received the same with notice thereof and that they were without consideration.

And this defendant, on information and belief, shows that on or about the 10th of May, 1870, the Portage, Winnebago & Superior Railroad Company, under chapter 126, laws of Wisconsin for the year 1869, entitled "An act to authorize certain counties, towns, cities, and villages to aid in the construction of the land-grant railroad from Portage City and from Doty's Island to Lake Superior," made a certain propo-

55 sition in writing to the town of Menasha to lend its aid to said company, of which proposition this defendant is informed and *and* believes Ex. A hereto annexed as a part of this answer, is a copy.

This defendant states, on information and belief, that said proposition as written was not submitted to the voters of said town, but a proposition of the same tenor save that in the proposition submitted to vote it is provided that the certificate referred to in the third article should be signed by the chief officers of said company and by the board of supervisors of said town, and that a majority of the voters of said town did vote on said proposition in the form and terms submitted and not as written, "for the railroad proposition," on the 4th June, 1870; but this defendant states, on information and belief, that said vote was of no validity, and that notice of such election was not given as required by law, and that plaintiff received said bonds with notice thereof; this defendant further states, on information and belief, that the town of Neenah accepted the like proposition referred to in said proposition.

This defendant, further answering, states, on information & belief, that by an act of the legislature of Wisconsin, approved Feb. 4, 1871, entitled "An act to change the name of the Portage, Winnebago and Superior Railroad Company," the name of said road was changed to

56 the Wisconsin Central Railroad Company, and thereby it was

substituted to all the liabilities and rights of said first named railroad company under said propositions.

This defendant further answering shows that neither the said Portage, Winnebago and Superior Railroad Company, nor said Wisconsin Central Railroad Company have ever built or caused to be built the railroad from block three (3) in Jones platt in the town of Neenah, nor from any place in the town of Menasha to the Wolf River, as provided in said proposition, nor laid the iron upon the track of such road, nor run cars over the same through from a depot on Doty's Island, or from a place in said town of Menasha to the Wolf River, as provided in said proposition.

And this defendant, further answering, states on information and belief that said railroad company had adopted for such portion and route of said railroad the railroad and track of the corporation known as the Chicago and Northwestern Railway Company, and had refused to construct and had abandoned the construction of a railroad from said block 3, in Jones' plat, town of Neenah, or from a place in the town of Menasha, as provided for in said proposition, and did not purpose for such part of said route to build, have, or maintain any independent line, as provided for in said proposition, from either of such points, but to use
57 the railroad and track of said Chicago and Northwestern Railway Company; by reason of which several matters the said railroad company was not entitled to receive, and said town of Menasha had no right or authority to issue and deliver, any bonds to said railroad company.

And this defendant states on information and belief that the plaintiff received said bonds and the coupons or interest warrants stated and set forth in his complaint in this action with notice that said railroad company had refused and neglected to build the portion of said railroad as above stated, and had adopted therefor the railroad and track of the Chicago and Northwestern Railway Company, as above stated.

And this defendant, for a separate defense, further answering, states on information and belief that the said railroad company having made the said proposition and having failed to build the portion of the railroad and having adopted therefor the road and track of the Chicago and Northwestern Railway Company, as in said last pleaded defense stated, the board of supervisors of said town of Menasha thereupon would not execute and deposit the bonds provided for by said proposition, and did not make and deliver the certificate in said proposition provided for.

This defendant, further answering, states on information and
58 belief that the said Wisconsin Central Railroad Company, intending to avoid the fulfillment of said proposition and to obtain the bonds provided for by said proposition from the town of Menasha on the pretense that said proposition as written had been accepted by the voters of said town, and that the adoption of the road and track of the Chicago and Northwestern Railway Company as aforesaid was a compliance with the terms of said proposition by its officers, agents, and servants, did, privately and secretly, without the knowledge or consent of the board of supervisors of said town of Menasha, induce and pursuade the chairman of the board of supervisors, together with the clerk of said town, to make and execute a series of bonds for the sum of $50,000, payable to said railroad company or bearer, and purporting to be done under said chap. 126 of the laws of Wisconsin for the year 1869, and thereupon, as this defendant is informed and believes, on or about the first day of November, 1871, the bonds referred to in the plaintiff's complaint herein (of which bonds and the coupons or interest warrants

annexed Exhibits B and C are copies, save that said bonds are numbered from 1 to 50 inclusive, and said coupons are respectively payable on the 1st days of December and June in every year until the maturity of said bonds) were signed by Fred. Schnellen, chairman of the board of supervisors of said town, and D. J. Ryan, clerk of said town, and on or
59 about same day were delivered by said Fred. Schnellen to one Gardner Colby at Milwaukee, he then being president of the Wisconsin Central Railroad Company, and that none of said bonds were signed or executed or delivered to any person or company whatever before said first day of November, A. D. 1871, as defendant is informed and believes.

That on the 15th day of July, A. D. 1871, one Publius V. Lawson, in behalf of himself, as a taxpayer, and of all other taxpayers of said town, commenced an action in the Winnebago County circuit court of Wisconsin to restrain said Town of Menasha and the officers thereof and said Schnellen and Ryan from signing or issuing or delivering to any person, company, or corporation whatever, any of said bonds, and to restrain said Wisconsin Central Railroad and its officers, agents, and employees and its assigns and successors from negotiating, selling, transferring, or delivering or pledging or hypothecating to any person, company, or corporation whatever, any of said bonds, for the following, among other reasons, to wit:

That contrary to said stipulation, proposition, and agreement the successor to said Portage, Winnebago and Superior Railroad Company, to wit, The Wisconsin Central Railroad Company, have not located or constructed their railroad from block 3, and do not propose or
60 intend so to locate or construct same, but that they have located and are constructing same from an entirely different point, and from a point not in the town of Neenah. Because said bonds provide that the same and coupons thereto attached shall, when due, be receivable for taxes to be collected in said town, which provision this plaintiff alleges is not authorized by chapter 126, general laws of 1869. Because, as the fact is, the said Wisconsin Central Railroad Company have adopted as part of their line proposed to be built by them in said proposition of May 10th, 1870, the line of railroad of the Chicago and Northwestern Railway Company and do not propose for the extent of some miles to build, have, or maintain between the points specified in said proposition any independent line of road, but to adopt line and use for that distance the road track of the Chicago and Northwestern Railway Company.

And that in such action an order was duly made by George Gary, county judge of Winnebago County, acting as court commissioner of said court, and duly served upon said town and upon said Schnellen and other supervisors of said town, and upon Ryan, town clerk of said town, restraining them and each of them from signing or issuing, or delivering to any person, company, or corporation whatever any one of said bonds, and which order was so served upon all said parties
61 except said Wisconsin Central Railway Company before the signing, issuing, or delivering of any of said bonds. And that in said action an order was duly made by said Gary, acting as such court commissioner, restraining all of said officers of said town, and the secretary of state of Wisconsin, and their successors in office, from signing, issuing, or delivering to any person, company or corporation whatever, any certificate that the iron had been laid upon the track of the Wisconsin Central Railroad, or that cars have been run over the same, through from Doty's Island, in the town of Neenah, to the Wolf

River; and from signing, issuing, making or delivering to any person, company or corporation whatever, any certificate of any such fact, and from making any certificate that the conditions upon which any bonds voted to said Wisconsin Central Railroad Company by said town were voted and issued and deposited by said town, had been performed by said railroad company; and from making any certificate whatever to give validity to said bonds, or to indicate that the conditions upon which same were voted had been performed, and which order, this defendant is informed and believes, was duly served on said secretary of state, and all of said town officers, before any certificate was made as required in and by said bonds, or in and by said proposition, of the per-
62 formance of the condition upon which it was issued or deposited, either by the officers of said town or by the secretary of state of Wisconsin; and this defendant is informed and believes that in such action an order was duly made by George Gary, as such court commissioner, restraining the Wisconsin Central Railroad Company from receiving, taking, holding, delivering, selling, conveying or transferring to any person or persons, company or corporation whatever, any of the said bonds, which said order was duly served upon said Wisconsin Central Railroad Company before the said company had conveyed, or transferred or delivered any one of said bonds to any person, company or corporation whatever, as this defendant is informed and believes, and whatever title the plaintiff has in such bonds came through delivery and sale of said bonds by said railroad company in violation of said injunctional order.

That all of such orders are still in force, and not in any particular vacated or modified or set aside; that said action is still pending in said Winnebago County circuit court and not finally determined; that all said orders were duly entered of record in said cause at time of the making; that in December the officers of town of Menasha attempted to collect a special railroad tax in same warrant with the general taxes of 1872, to pay the coupons on said bonds which had become due,
63 and that on the 18th day of February, 1873, they were restrained from collecting such tax by order made in said cause of Lawson, plaintiff, by Hon. D. J. Pulling, judge of said Winnebago County circuit court, on account that said bonds had been issued in violation of said injunctional order; that said last order was substantially as follows: That any and all the officers, agents and servants of the town of Menasha do refrain from levying or assessing any tax, and from collecting any tax already assessed or levied, or pretending to be assessed or levied, for or on account of, or to pay any principal or interest of, or upon, any bonds issued, or purporting to be issued, or voted to be issued, to or for the use of the Wisconsin Central Railroad Company, under or by virtue of any election pretended to be held in the town of Menasha on the 4th day of June, 1870, and also that they do refrain from paying any principal or interest of or upon any such bonds, or on account of said vote, to any person whatever. And that said order is still in full force, and not in any particular vacated, modified or set aside, and which order was entered of record in said cause at making thereof.

And this defendant states, on information and belief, that the plaintiff received said bonds and coupons with notice of the pendency of such action.

And this defendant, further answering, states on information
64 and belief that in said action the town of Menasha, and all the supervisors of said town, and the town clerk of said town, and the Wisconsin Central Railroad Company, and secretary of state of

Wisconsin were made parties defendant and duly served with process therein.

This defendant, further answering, for a further and separate defense, states on information and belief that on or about the 10th day of May, 1870, the Portage, Winnebago and Superior Railroad Company, pursuant to chapter 126 of the laws of Wisconsin for the year 1869, entitled "An act to authorize certain counties, towns, cities, and villages to aid in the construction of the land-grant railroad from Portage City and from Doty's Island to Lake Superior," made in writing to the town of Menasha a proposition to lend its aid, of which Exhibit A is a copy, as this defendant is informed and believes, and also to the town of Neenah a like proposition.

That, as this defendant is informed and believes, said town of Neenah accepted the proposition made to it, and the town of Menasha voted on a proposition varying from said proposition Exhibit A in that the proposition submitted and voted on requires the certificate referred to in the third article shall be signed by the chief officers of said company and the board of supervisors of said town, and that the canvassers of such vote certified a majority of such votes were cast for said railroad
65 proposition as submitted, but this defendant is informed and believes no sufficient legal notice was given of the holding of such election.

And this defendant states, on information & belief, that in & by said proposition so voted on by said town it is provided that said bonds, among other conditions and provisions, shall also further provide "that said bonds shall be valid only when it is thereon duly certified that the conditions upon which they are voted, issued, and deposited by said town have been performed."

And this defendant states on information & belief it is also in said proposition so voted on provided "that the proper officers of said town shall issue said bonds as required by law, and on notice being received by the chairman of the board of supervisors of said town from the said National Bank of Commerce of New York that this company has deposited therein to the credit of said town the said five hundred full-paid shares of its capital stock, he shall deposit, or cause to be deposited, in said bank, all of the said bonds, with instructions to said bank or its officers to hold the same on deposit, in trust for said town, until such time as there shall be filed in said bank a properly authenticated certificate, signed by the chief officers of this company and the board of supervisors of said town, or the secretary of state of this State, that
66 the iron has been laid upon the track of road, and cars have been run over the same through from the depot on Doty's Island or in said town to the Wolf River, when the said bonds shall become the absolute property of and be held by said bank, subject to the order of this company or its assigns, and which certificate shall authorize and require the president of said bank to certify upon the back of each of said bonds that the conditions upon which the said bonds were voted, issued, and deposited by said town have been performed; and in case this company fail to comply with the said conditions, the said bonds shall be returned to said town on demand of the authorities thereof."

This defendant, further answering, states on information and belief that the name of said railroad company was by an act of the legislature of Wisconsin approved February 4th, 1871, entitled "An act to change the name of the Portage, Winnebago and Superior Railroad Company" changed to the "Wisconsin Central Railroad Company," and thereby

said company was substituted to all the liabilities and rights of said first-named railroad company under said proposition.

This defendant, further answering, shows, on information and belief, that neither the said Portage, Winnebago and Superior Railroad Company nor said Wisconsin Central Railroad Company have ever built or caused to be built the railroad from block three (3) in Jones
67 plat, in the town of Neenah, nor from any place in the town of Menasha, to the Wolf River, as provided in said proposition, nor laid the iron upon the track of such road, nor run cars over the same through from a depot on Doty's Island or from a place in said town of Menasha to the Wolf River, as provided in said propositions. And this defendant, further answering, states on information and belief that said railroad company had adopted for such portion and route of said railroad for some distance the railroad and track of the corporation known as the Chicago and Northwestern Railway Company, and had refused to construct and had abandoned the construction of a railroad from said block 3 in Jones plat in town of Neenah, or from a place in the town of Menasha, as provided for in said propositions, and did not purpose for such part of said route to build, have, or maintain any independent line as provided for in said proposition from either of such points, but to use the railroad and track of said Chicago and Northwestern Railway Company.

And this defendant, further answering, states upon information and belief that nevertheless the chairman of the board of supervisors of said town, with the town clerk, pretended to make and execute a certain series of bonds with interest warrants in pursuance of such propo-
68 sition, of which the bonds and interest warrants referred to in the plaintiff's complaint are a part, and which bonds and interest-warrants are of the same tenor and effect as Exhibit B & C hereto annexed.

This defendant, further answering, states on information and belief that said bonds referred to in the plaintiff's complaint contain upon the face of each a condition that "this bond shall be valid only when it is thereon duly certified that it has been duly certified that the conditions upon which it was voted, issued, & deposited by said town have been performed," which provision and condition has reference to the said proposition, and which, together with the notice of election containing the proposition as submitted, and the certificates of the canvassers of the election has been since said election, held on the 4th day of June, 1870, upon the files & public records, and forms part thereof of said town of Menasha.

This defendant, further answering, states on information and belief that no certificate such as is specified in said bonds or such certificate as is specified in said propositions was ever written, printed, signed, or made upon said bonds or any of them.

This defendant, further answering, states on information & belief that there never was filed in said National Bank of Commerce of New
69 York a certificate signed by the chief officer or officers of said railroad company or by the board of supervisors of said town or by the chairman of the said board or the secretary of state of the State of Wisconsin, that the iron had been laid upon the track of *of* road and cars had been run over the same through from the depot on Doty's Island, or in said town to the Wolf River, and authorizing and requiring the president of said bank to certify upon the back of each of said bonds "that the conditions upon which the said bonds were voted, issued and deposited by said town have been performed."

And this defendant, further answering, states on information and belief that if any certificate ever was filed in said bank, that the same was in words, characters, and figures as appears by Exhibit D thereto annexed as part of this answer.

And this defendant, further answering, states on information and belief that if any certificate or certificates was or were ever written, printed, signed, or made upon said bonds or either of them, such certificates were in words, characters, and figures as appears by Exhib'ts D & E hereto annexed as part of this answer.

And this defendant, further answering, states that the said bonds and interest-warrants, with the certificates aforesaid, are invalid and of no force and effect.

70 Wherefore this defendant demands judgement of this court that the plaintiff's complaint be dismissed with costs to defendant.

E. MARINER,
Att'y for City of Menasha, Def't.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, Winnebago County, ss:

Publius V. Lawson, being duly sworn, on his oath says that he is the mayor of the city of Menasha; that he knows the contents of the foregoing answer, & that the same is true of his own knowledge except as to those matters which are therein stated on information and belief, and as to those matters he believes it to be true.

PUBLIUS V. LAWSON.

Subscribed and sworn to before me this 4th day of September, 1876.
ELBRIDGE SMITH,
U. S. Commissioner Eastern District of Wisconsin.

Exhibit A.

Proposition by the Portage, Winnebago and Superior Railroad Company to the Town of Menasha.

The Portage, Winnebago & Superior Railroad Company of the State of Wisconsin, a corporation duly incorporated and organized under and in pursuance of the laws of said State, and authorized to locate, construct, and maintain and operate a railroad with one or more
71 tracks from Doty's Island, situated in the towns of Neenah and Menasha, in the county of Winnebago, northwesterly, via the towns of Weyauwega, Waupaca, Amerherst, and Stevens Point to Bayfield, and thence to Superior on Lake Superior, and requiring the aid of the said towns of Menasha and Neenah, each in the sum of fifty thousand dollars in the construction of that portion of its said line of road as lies between said Doty's Island and the Wolf River, and being thereto authorized by chapter 126 of the general laws of 1869, entitled "An act to authorize certain counties, towns, cities, and villages to aid in the construction of the land-grant railroad from Portage City and from Doty's Island to Lake Superior," submits to the said town of Menasha the following proposition, to wit:

First. That in consideration of the construction by said company of a single track railroad from block 3 in Jones plat, in the said town of Neenah, on Doty's Island, to the Wolf River, and five hundred full paid shares of the capital stock of said company of one hundred dollars each, the said town of Menasha shall pay to said company or its assigns the

sum of fifty thousand dollars, at the time and in the manner hereinafter provided.

Second. That said town of Menasha shall secure to this company the payment of the said sum of fifty thousand dollars in its corporate
72 bonds, to be issued in that amount, to run twenty years from the date of issue, with interest thereon at the rate of seven per cent. payable semi-annually, principal and interest payable in gold at the National Bank of Commerce in the city of New York; that the said bonds, besides the usual conditions, shall provide that the same and the coupons or interest-warrants thereon shall, when due, be receivable for taxes to be collected in said town, and that there shall be annually levied upon the property in said town a tax sufficient to pay the interest upon said bonds and to raise a sinking fund to pay the principal thereof when the same shall become due and payable in the manner provided by said chapter 126 of the general laws of 1869, and shall also further provide that said bonds shall be valid only when it is thereon duly certified that the conditions upon which they were voted, issued, and deposited by said town have been performed. The said bonds and coupons or interest-warrants attached shall be engraved or printed in the usual form and style & in such denominations (not less than one nor more than ten hundred dollars) as shall be approved by this company, and the costs thereof shall be paid by the treasurer on the order of the chairman of said town.

Third. That the proper officers of said town shall issue said
73 bonds as required by law, and on notice being received by the chairman of the board of supervisors of said town from the said National Bank of Commerce of New York that this company has deposited therein to the credit of said town the said five hundred full paid shares of its capital stock, he shall deposit, or cause to be deposited, in all of the said bonds, with instructions to said bank, or its officers, to hold the same on deposit in trust for said town until such time as there shall be filed in said bank a properly authenticated certificate, signed by the chief officer of this company and the chairman of the board of supervisors of said town, or the secretary of state of this State, that the iron has been laid upon the track of road and cars have been run over the same through from the depot on Doty's Island, or in said town to the Wolf River, when the said bonds shall become the absolute property of and be held by said bank subject to the order of this company or its assigns, and which certificate shall authorize and require the president of said bank to certify upon the back of each of said bonds that the conditions upon which the said bonds were voted, issued, and deposited by said town have been performed, and in case this company fail to comply with said conditions the said bonds shall be returned to said town on demand of the authorities thereof.

74 Fourth. That in consideration of the acceptance of this proposition and the fulfilment of the terms thereof by said town this company will, without any unnecessary delay, issue to and deposit to the credit of said town in the said National Bank of Commerce of New York five hundred full paid shares (of one hundred dollars each) of its capital stock, which is to be delivered to said town at the time of the delivery of said bonds to this company; and that on the acceptance of this proposition, and as soon as the right of way and depot grounds have been secured by this company, this company will commence the construction of the track of said portion of its road, and will have the same completed, and the iron laid thereon, and cars run over the same within one year from the time the bonds of said town have been issued

and deposited in said bank as aforesaid: Provided, however, that the like proposition submitted by this company to the town of Neenah shall be accepted and its conditions fulfilled by said town.

Fifth. In the event the said town of Neenah shall fail to accept and fulfil the terms of said proposition so as aforesaid submitted to it, this company further proposes to said town of Menasha that if the required additional sum of fifty thousand dollars shall be furnished to this company by individual subscription to stock in like amount, and satis-
75 factorily secured to be paid, the depot of this company shall be located, and its road constructed therefrom at such place in said town, and on such route as may be agreed upon between this company and the authorities of said town, and under the foregoing proposition, as hereby qualified.

In witness whereof the Portage, Winnebago and Superior Railroad Company has caused these presents to be signed by its president and sealed with its seal this 10th day of May, A. D. 1870.

[SEAL OF RAILROAD CO.] GEO. REED,
President P. W. & S. R. R. Co.

EXHIBIT B.

$1,000.] TOWN OF MENASHA. [$1,000.

No. 16.] STATE OF WISCONSIN. [No. 16.

The town of Menasha, in the county of Winnebago, and State of Wisconsin, acknowledges itself indebted in the sum of one thousand dollars lawful coin of the United States of America, which sum the said town of Menasha promises to pay to the Wisconsin Central Railroad Company, or to the bearer hereof, at the National Bank of Commerce, in the city of New York, in twenty years from the first day of June, 1871, with interest at the rate of seven per centum, payable semi-annually at said bank upon the presentation and delivery of the several coupons hereto annexed as they respectively become due, the principal and in-
76 terest payable in gold, and to the payment of which in the manner aforesaid the faith and revenues of said town are hereby irrevocably pledged.

This bond and the coupons or interest warrants thereon shall when due be receivable for taxes to be collected in said town, and there shall be annually levied upon the property in said town a tax sufficient to pay the interest upon this bond and to raise a sinking fund to pay the principal when the same shall become due and payable in the manner provided by chapter 126, of the general laws of 1869 of said State, and this bond shall be valid only when it is thereon duly certified that it has been duly certified, that the conditions upon which it was voted, issued, and deposited by said town have been performed.

This bond is one of a series amounting in the aggregate to fifty thousand dollars and is issued in pursuance of a vote of the legal voters of said town on the 4th day of June 1870, under and by virtue of an act of the legislature of the State of Wisconsin, entitled "An act to authorize certain counties, towns, cities and villages to aid in the construction of the land grant railroad from Portage City and from Doty's Island to Lake Superior" approved March 9th, 1869, and in pursuance of an act of the legislature of said State, approved February 4th, A. D. 1871, entitled "An act to change the name of the Portage, Winnebago
77 & Superior Railroad Company" and of an act of the same legisla-

ture approved March 1st, 1871, amendatory of said chapter 126 of the general laws of 1869, of Wisconsin.

In witness whereof, the chairman of the board of supervisors and town clerk of said town have hereunto set their hands this first day of June, 1871.

Attest:

{ TOWN OF MENASHA, WISCONSIN, } F. SCHNELLEN,
{ WINNEBAGO COUNTY, SEAL. } *Chairman of the Board of Supervisors.*
D. J. RYAN, *Clerk.*

[50c't. U. S. rev. st'p.]

EXHIBIT C.

$35,00 gold.

The Town of Menasha, Wisconsin, will pay the bearer at the National Bank of Commerce, New York, $35,00 in gold on the first day of December, 1871, being six months' interest on bond No. 16, for one thousand dollars.

FR. SCHNELLEN, *Chairman.*
D. J. RYAN, *Clerk.*

EXHIBIT D.

To the President of the National Bank of Commerce of New York.

The undersigned Gardner Colby, President of the Wisconsin Central Railroad Company, formerly the Portage, Winnebago and Superior Railroad Company, and Fr. Schnellen, chairman of the board of supervisors of the town of Menasha, Winnebago County, Wisconsin, do
78 hereby certify that the iron has been laid on the track of road of said company from block No. 3 in Jones plat, in the town of Neenah, Doty Island, to Wolf River, and that the cars have been run over the same daily for more than two weeks past, from the depot on Doty's Island to said Wolf River; and that therefore according to the terms of the proposition (a copy of which is hereto annexed) the said company are entitled to the transfer of bonds of said town deposited with you.

[SEAL.] (Signed) WISCONSIN CENTRAL R. R. CO.
By GARDNER COLBY, *President.*
(Signed) FREDERICK SCHNELLEN,
Chairman of the Town of Menasha.

STATE OF WISCONSIN,
County of Waupaca, Town of Weyauwega, ss:

I, Albert V. Balch, a commissioner of deeds for the State of New York, residing in the town of Weyauwega, do hereby certify that Frederick Schnellen is the chairman of the board of supervisors of the Town of Menasha, in the State of Wisconsin, and that his signature to the foregoing certificate is in his own hand and is genuine as he has this day before me acknowledged.

In testimony whereof I have signed my name and affixed my official seal this 24th day of February, A. D. 1872.

[SEAL.] (Signed) ALBERT V. BALCH,
Commissioner of Deeds for the State of New York.

79 COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk, City of Boston, ss:

On this 29th day of February, A. D. 1872, the above-named Gardner Colby, who is personally known to me, and known to me to be the president of the said railroad company, made oath that the above-written certificate by him signed is true and that the seal affixed thereto is the seal of said company and was so affixed by its authority.

Witness my hand and official seal at the city of Boston the day and year aforesaid.

[SEAL.] (Signed) SAM'L S. CURTIS,
Notary Public.

EXHIBIT E.

I hereby certify that I have received certificates of which the above are copies, which certificates are on file in this bank, April 17, 1872.

ROBERT LENOX KENNEDY,
President of the National Bank of Commerce in New York.

OCTOBER 5, 1876.

Depositions on behalf of defendant received from post office and filed.

OCTOBER 9, 1876.

Depositions on behalf of pl'ff received from Dixon, Hooker, Wegg & Noyes and filed.

OCTOBER 11, 1876.

On reading and filing the petition of the defendant of the city
80 of Menasha praying for the production of the bonds mentioned in the plaintiff's complaint in this action, namely, bonds issued by the Town of Menasha to the Wisconsin Central Railroad Company, bearing date June 1st, 1871, payable in twenty years from date, each being for one thousand dollars, and numbered 12, 13, 14, 15, 16, 18, 19, 37, 38, 39, respectively for inspection and to be used on the trial of this action, on motion of E. Mariner, of counsel for said petitioner, it is hereby ordered, that the plaintiff produce and deposit the said bonds with the clerk of this court for the inspection of petitioner's attorney and to be used on the trial of this cause, or deliver copies thereof verified by oath to the petitioner's attorney, E. Mariner, within five days, or show cause on the seventeenth day of October instant, at 10 o'clock in the forenoon, before the court in the city of Milwaukee, why the prayer of such petition should not be granted

It is further ordered that a copy of said petition and of this order be forthwith served on the plaintiff's attorneys.

And now at this same term, to wit, January term, A. D. 1877, and on the sixty-fifth day thereof, to wit, on the 20th day of March, A. D. 1877, the following proceedings were had, to wit:

Trial.

ROWLAND G. HAZARD
vs.
81 THE TOWN OF MENASHA AND THE CITY of Menasha. } At law.

This day came the parties by their counsel, Mr. L. S. Dixon appearing for the plaintiff and Messrs. Sutherland and Mariner for the defend-

ants, and the issues herein came on to be tried. Whereupon a jury was called to try the same who came, to wit, Walter E. McVicar, William Ashby, Charles Stewart, Justus Kirby, Henry Hall, Alfred Ackerman, Thomas Walsh, Ferdinand Vanderbeck, George H. Lawrence, M. S. Barrett, Thomas Jordan, and Isaac Brazelton, twelve free, honest, and lawful men of the district, who were severally sworn and empannelled, and the trial not being concluded, the same was adjourned until to-morrow morning.

MARCH 21, 1877.

This day came the parties, by their counsel, and the trial of the issues herein was resumed, and, not being concluded, the same was adjourned by consent until Wednesday, the twenty-eighth instant.

MARCH 28, 1877.

This day came the parties, by their counsel, and the trial of the issues herein was resumed, and, not being concluded, the same was adjourned until to-morrow morning.

MARCH 29, 1877.

82 This day came the parties, by their counsel, and the trial of the issues herein was resumed, and, not being concluded, the same was adjourned until to-morrow morning.

Trial continued.—Verdict & motion for new trial.

MARCH 30TH, 1877.

This day came the parties, by their counsel, and the trial of the issues herein was resumed. And the jurors of the jury aforesaid being charged by the court, on their said oaths respectively do say that they find the issues herein in favor of the plaintiff, and assess the damages to the said plaintiff at the sum of eight hundred and forty-four dollars and ninety-six cents.

And came the defendants' counsel and moved the court for a new trial for reasons filed, as follows:

U. S. circ't court, eastern dist. Wis.

ROWLAND G. HAZARD
vs.
THE TOWN OF MENASHA & THE CITY OF Menasha.

And now come the said defendants and move the court now here for a new trial for reasons to be hereafter stated.

E. MARINER, *Def'ts' Att'y.*

And afterwards, to wit, on the 119th day of said term, to wit, on the second day of July, A. D. 1877, the following proceedings were had, to wit:

Judgment.

83 ROWLAND G. HAZARD
vs.
THE TOWN OF MENASHA & THE CITY of Menasha. } At law.

This day came the parties, by their counsel, and the motion of the defendants for a new trial being submitted, on consideration thereof it is ordered by the court that said motion be, and hereby is, overruled.

Whereupon it is considered and adjudged by this court now here that the said plaintiff do have and recover of the said defendants, The Town of Menasha and The City of Menasha, the sum of eight hundred and forty-four dollars and ninety-six cents damages so as aforesaid assessed by the jury, together with two hundred and forty-three dollars and eighty cents, his costs about his said suit in this behalf by him expended, and that he have execution therefor.

Judgment-roll filed July 2nd, A. D. 1877.

EDWARD KURTZ, *Clerk.*

Damages, 844.96; costs, 243.80—$1,088.76.

And same day (July 2, 1877) certificate of division of opinion filed, as follows:

Certificate of division of opinion.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin:

At a circuit court of the United States, begun and held at Mil-
84 waukee, for the eastern district of Wisconsin, on the day of March, in the year of our Lord one thousand eight hundred and seventy-seven; present, the Hons. Thomas Drummond, circuit judge, and Charles E. Dyer, district judge.

ROWLAND G. HAZARD
ags't
THE TOWN OF MENASHA AND THE CITY OF Menasha.

This is an action upon coupons for interest of bonds of the town of Menasha, payable to the Wisconsin Central Railroad Company, or bearer, said bonds on their face expressed to be valid only on the performance of certain conditions, and on the trial of the issues made by the pleadings it appeared as facts:

First. That the Portage, Winnebago & Superior Railroad Company made to the town of Menasha, a municipal corporation, a proposition in writing, under chapter 26 of the Gen'l Laws of Wisconsin, 1869, entitled "An act to authorize certain counties, towns, cities, and villages to aid in the construction of the land-grant railroad from Portage City and from Doty's Island to Lake Superior," approved March 9th, 1869, to aid said railroad company by the issue of its bonds in the construction of its railroad from block three, Jones plat, Doty's Island, to Wolf River, and which proposition is as follows:

85 Proposition by the Portage, Winnebago and Superior Railroad Company to the town of Menasha.

The Portage, Winnebago & Superior Railroad Company of the State of Wisconsin, a corporation duly incorporated and organized under and in pursuance of the laws of said State, and authorized to locate, construct, and maintain and operate a railroad with one or more tracks, from Doty's Island, situated in the town of Neenah and Menasha, in the county of Winnebago, northwesterly, via the towns of Weyauwega, Waupaca, Amherst, and Stevens Point, to Bayfield, and thence to Superior on Lake Superior, and requiring the aid of the said towns of Menasha and Neenah, each in the sum of fifty thousand dollars, in the

construction of that portion of its said line of road as lies between said Doty's Island and the Wolf River, and being thereto authorized by chapter 126 of the General Laws of 1869, entitled "An act authorize certain counties, towns, cities, and villages to aid in the construction of the land-grant railroad from Portage City, and from Doty's Island to Lake Superior," submits to the said town of Menasha the following proposition, to wit:

First. That in consideration of the construction by said company of a single track railroad from block 3 in Jones Plat, the said town of
86 Neenah, on Doty's Island, to the Wolf River, and of five hundred full paid shares of the capital stock of said company of one hundred dollars each, the said town of Menasha shall pay to said company or its assigns the sum of fifty thousand dollars, at the time and in the manner hereinafter provided.

Second. That said town of Menasha shall secure to this company the payment of the said sum of fifty thousand dollars in its corporate bonds to be issued in that amount, to run twenty years from the date of issue, with interest thereon at the rate of seven per cent., payable semi-annually, principal and interest payable in gold at the National Bank of Commerce of the city of New York; that the said bonds, besides the usual conditions, shall provide that the same and the coupons or interest warrants thereon shall, when due, be receivable for taxes to be collected in said town; and that there shall be annually levied upon the property in said town a tax sufficient to pay the interest upon said bonds, and to raise a sinking-fund to pay the principal thereof when the same shall become due, and payable in the manner provided by said chapter 126, of the general laws of 1869; and shall also further provide that said bonds shall be valid only when it is thereon duly certified that the
87 conditions upon which they were voted, issued, and deposited by said town have been performed. The said bonds and coupons or interest warrants attached shall be engraved or printed in the usual form and style, and in such denominations (not less than one nor more than ten hundred dollars) as shall be approved by this company, and the cost thereof shall be paid by the treasurer, on the order of the chairman of said town.

Third. That the proper officers of said town shall issue said bonds as required by law, and on notice being received by the chairman of the board of supervisors of said town from the said National Bank of Commerce of New York that this company has deposited therein to the credit of said town the said five hundred full paid shares of its capital stock, he shall deposit or cause to be deposited in said bank all of the said bonds, with instructions to said bank or its officers to hold the same on deposit in trust for said town, until such time as there shall be filed in said bank a properly authenticated certificate signed by the chief officer of this company and the chairman of the board of supervisors of said town, or the secretary of state of this State, that the iron has been laid upon the track of road, and cars have been run over the same through from the depot on Doty's Island, or in said
88 town to the Wolf River, when the said bonds shall become the absolute property of and be held by said bank, subject to the order of this company or its assigns, and which certificate shall authorize and require the president of said bank to certify upon the back of each of said bonds that the conditions upon which the said bonds was voted, issued, and deposited by said town have been performed, and in case this company fail to comply with the said conditions the said bonds shall be returned to said town on demand of the authorities thereof.

Fourth. That in consideration of the acceptance of this proposition and the fulfilment of the terms thereof by the said town, this company will, without unnecessary delay, issue to the deposit to the credit of said town in the said National Bank of Commerce of New York five hundred full paid shares (of one hundred dollars each) of its capital stock, which is to be delivered to said town at the time of the delivery of said bonds to this company, and that on the acceptance of this proposition, and as soon as the right of way and depot grounds have been secured by this company, this company will commence the construction of the track of said portion of its road, and will have the same completed and the iron laid thereon and cars run over the same within one year from the
89 time the bonds of said town have been issued and deposited in said bank as aforesaid: Provided, however, That the like propositions submitted by this company to the town of Neenah shall be accepted and its conditions fulfilled by said town.

Fifth. In the event the said town of Neenah fail to accept and fulfill the terms of said proposition so as aforesaid submitted to it, this company further proposes to said town of Menasha that if the required additional sum of fifty thousand dollars shall be furnished to this company by individual subscription to stock in like amount, and satisfactorily secured to be paid, the depot of this company shall be located and its road constructed therefrom at such place in said town and on such route as may be agreed upon between this company and the authorities of said town, and under the foregoing proposition as hereby qualified.

In witness whereof, the Portage, Winnebago and Superior Railroad Company has caused these presents to be signed by its president and sealed with its seal this 10th day of May, A. D. 1870.

GEO. REED,
President P., W. & S. R. R. Co.

Second. That on the 4th June, 1870, an election was held in said town as provided in said act, and a majority of the votes cast in favor of the railroad proposition.

90 Third. That said proposition was published and voted upon as required by said act, except the third paragraph, which was published in the words following:

"Third. That the proper officers of said town shall issue said bonds as required by law, and, on notice being received by the chairman of the board of supervisors of said town from the said National Bank of Commerce of New York that this company has deposited therein to the credit of said town the said five hundred full paid shares of its capital stock, he shall deposit, or cause to be deposited in said bank, all of the said bonds, with instructions to said bank or its officers to hold the same on deposit in trust for said town until such time as there shall be filed in said bank a properly authenticated certificate, signed by the chief officers of this company and the board of supervisors of said town, or the secretary of state of this State, that the iron has been laid upon the track of road and cars have been run over the same through from the depot, on Doty's Island, or in said town, to the Wolf River, when the said bonds shall become the absolute property of and be held by said bank, subject to the order of this company or its assigns, and which certificate shall authorize and require the president of said bank
91 to certify upon the back of each of said bonds that the conditions upon which the said bonds were voted, issued, and deposited by said town have been performed; and in case this company fail to com-

ply with the said conditions, the said bonds shall be returned to said town on demand of the authorities thereof."

Fourth. That the Wisconsin Central Railroad Company deposited with said bank for said town five hundred shares of its common capital stock.

Fifth. That on or about the 1st June, 1871, the chairman of the board of supervisors of said town, with the town clerk, made fifty coupon bonds of said town; that thereupon a suit was instituted in the circuit court of the county of Winnebago by one P. V. Lawson, a tax-payer in said town, on behalf of himself and all other tax-payers, injoining the issue of said bonds, particularly describing the same, and an injunction allowed restraining the issue of said particular fifty bonds, but no others under said act, and served upon the officers of said town, which injunction is still in force; that upon service of such injunction such issue of bonds was burned.

Sixth. That on the 25th day of October, 1871, the chairman of the board of supervisors and the clerk of said town executed and de-
92 livered to the National Bank of Commerce a series of fifty coupon bonds of said town, of which the following is a copy:

$1,000.] TOWN OF MENASHA. [$1,000.

No. 16.] STATE OF WISCONSIN. [No. 16.

The town of Menasha, in the county of Winnebago, and State of Wisconsin, acknowledges itself indebted in the sum of one thousand dollars lawful coin of the United States of America, which sum the said town of Menasha promises to pay to the Wisconsin Central Railroad Company, or to the bearer hereof, at the National Bank of Commerce in the city of New York, in twenty years from the first day of June, 1871, with interest at the rate of seven per centum, payable semi-annually at said bank, upon the presentation and delivery of the several coupons hereto annexed as they respectively become due, the principal and interest payable in gold, and to the payment of which, in the manner aforesaid, the faith and revenues of said town are hereby irrevocably pledged.

This bond and the coupons or interest warrants thereon shall, when due, be receivable for taxes to be collected in said town, and there shall be annually levied upon the property in said town a tax sufficient
93 to pay the interest upon this bond and to raise a sinking-fund to pay the principal when the same shall become due and payable in the manner provided by chapter 126 of the general laws of 1869 of said State, and this bond shall be valid only when it is thereon duly certified that it has been duly certified that the conditions upon which it was voted, issued, and deposited by said town have been performed.

This bond is one of a series amounting in the aggregate to fifty thousand dollars, and is issued in pursuance of a vote of the legal voters of said town on the 4th day of June, 1870, under and by virtue of an act of the legislature of the State of Wisconsin, entitled "An act to authorize certain counties, towns, cities, and villages to aid in the construction of the land grant railroad from Portage City and from Doty's Island to Lake Superior," approved March 9th, 1869, and in pursuance of an act of the legislature of said State, approved February 4th, A. D. 1871, entitled "An act to change the name of the Portage, Winnebago and Superior Railroad Company," and of an act of the same legislature, approved March 1st, A. D. 1871, amendatory of said chapter 126 of the general laws of 1869 of Wisconsin.

Fourth. That in consideration of the acceptance of this proposition and the fulfilment of the terms thereof by the said town, this company will, without unnecessary delay, issue to the deposit to the credit of said town in the said National Bank of Commerce of New York five hundred full paid shares (of one hundred dollars each) of its capital stock, which is to be delivered to said town at the time of the delivery of said bonds to this company, and that on the acceptance of this proposition, and as soon as the right of way and depot grounds have been secured by this company, this company will commence the construction of the track of said portion of its road, and will have the same completed and the iron laid thereon and cars run over the same within one year from the
89 time the bonds of said town have been issued and deposited in said bank as aforesaid: Provided, however, That the like propositions submitted by this company to the town of Neenah shall be accepted and its conditions fulfilled by said town.

Fifth. In the event the said town of Neenah fail to accept and fulfill the terms of said proposition so as aforesaid submitted to it, this company further proposes to said town of Menasha that if the required additional sum of fifty thousand dollars shall be furnished to this company by individual subscription to stock in like amount, and satisfactorily secured to be paid, the depot of this company shall be located and its road constructed therefrom at such place in said town and on such route as may be agreed upon between this company and the authorities of said town, and under the foregoing proposition as hereby qualified.

In witness whereof, the Portage, Winnebago and Superior Railroad Company has caused these presents to be signed by its president and sealed with its seal this 10th day of May, A. D. 1870.

GEO. REED,
President P., W. & S. R. R. Co.

Second. That on the 4th June, 1870, an election was held in said town as provided in said act, and a majority of the votes cast in favor of the railroad proposition.

90 Third. That said proposition was published and voted upon as required by said act, except the third paragraph, which was published in the words following:

"Third. That the proper officers of said town shall issue said bonds as required by law, and, on notice being received by the chairman of the board of supervisors of said town from the said National Bank of Commerce of New York that this company has deposited therein to the credit of said town the said five hundred full paid shares of its capital stock, he shall deposit, or cause to be deposited in said bank, all of the said bonds, with instructions to said bank or its officers to hold the same on deposit in trust for said town until such time as there shall be filed in said bank a properly authenticated certificate, signed by the chief officers of this company and the board of supervisors of said town, or the secretary of state of this State, that the iron has been laid upon the track of road and cars have been run over the same through from the depot, on Doty's Island, or in said town, to the Wolf River, when the said bonds shall become the absolute property of and be held by said bank, subject to the order of this company or its assigns, and which certificate shall authorize and require the president of said bank
91 to certify upon the back of each of said bonds that the conditions upon which the said bonds were voted, issued, and deposited by said town have been performed; and in case this company fail to com-

ply with the said conditions, the said bonds shall be returned to said town on demand of the authorities thereof."

Fourth. That the Wisconsin Central Railroad Company deposited with said bank for said town five hundred shares of its common capital stock.

Fifth. That on or about the 1st June, 1871, the chairman of the board of supervisors of said town, with the town clerk, made fifty coupon bonds of said town; that thereupon a suit was instituted in the circuit court of the county of Winnebago by one P. V. Lawson, a tax-payer in said town, on behalf of himself and all other tax-payers, injoining the issue of said bonds, particularly describing the same, and an injunction allowed restraining the issue of said particular fifty bonds, but no others under said act, and served upon the officers of said town, which injunction is still in force; that upon service of such injunction such issue of bonds was burned.

Sixth. That on the 25th day of October, 1871, the chairman of the board of supervisors and the clerk of said town executed and de-
92 livered to the National Bank of Commerce a series of fif.y coupon bonds of said town, of which the following is a copy:

$1,000.] TOWN OF MENASHA. [$1,000.

No. 16.] STATE OF WISCONSIN. [No. 16.

The town of Menasha, in the county of Winnebago, and State of Wisconsin, acknowledges itself indebted in the sum of one thousand dollars lawful coin of the United States of America, which sum the said town of Menasha promises to pay to the Wisconsin Central Railroad Company, or to the bearer hereof, at the National Bank of Commerce in the city of New York, in twenty years from the first day of June, 1871, with interest at the rate of seven per centum, payable semi-annually at said bank, upon the presentation and delivery of the several coupons hereto annexed as they respectively become due, the principal and interest payable in gold, and to the payment of which, in the manner aforesaid, the faith and revenues of said town are hereby irrevocably pledged.

This bond and the coupons or interest warrants thereon shall, when due, be receivable for taxes to be collected in said town, and there shall be annually levied upon the property in said town a tax sufficient
93 to pay the interest upon this bond and to raise a sinking-fund to pay the principal when the same shall become due and payable in the manner provided by chapter 126 of the general laws of 1869 of said State, and this bond shall be valid only when it is thereon duly certified that it has been duly certified that the conditions upon which it was voted, issued, and deposited by said town have been performed.

This bond is one of a series amounting in the aggregate to fifty thousand dollars, and is issued in pursuance of a vote of the legal voters of said town on the 4th day of June, 1870, under and by virtue of an act of the legislature of the State of Wisconsin, entitled "An act to authorize certain counties, towns, cities, and villages to aid in the construction of the land grant railroad from Portage City and from Doty's Island to Lake Superior," approved March 9th, 1869, and in pursuance of an act of the legislature of said State, approved February 4th, A. D. 1871, entitled "An act to change the name of the Portage, Winnebago and Superior Railroad Company," and of an act of the same legislature, approved March 1st, A. D. 1871, amendatory of said chapter 126 of the general laws of 1869 of Wisconsin.

In witness whereof the chairman of the board of supervisors
94 and town clerk of said town have hereunto set their hands, this first day of June, 1871.

F. SCHNELLEN,
Chairman of the Board of Supervisors.

Attest:

{ TOWN OF MENASHA, WISCONSIN, } D. J. RYAN,
{ WINNEBAGO COUNTY, SEAL. } *Clerk.*

[50 cts. U. S. rev. st'p.]

To which bonds interest coupons in form like those set out in the complaint for the interest life of the bonds were annexed.

Sixth. That afterwards the chairman of the board of supervisors of said town and the president of the Wisconsin Central Railroad Company signed and delivered to said bank a joint certificate, which was afterwards authenticated by notarial certificates of which the following is a copy.

To the president of the National Bank of Commerce of New York:

The undersigned, Gardner Colby, president of the Wisconsin Central Railroad Company, formerly the Portage, Winnebago and Superior Railroad, and Fr. Schellen, chairman of the board of supervisors of the town of Menasha, Winnebago County, Wisconsin, do hereby certify that the iron has been laid on the track of road of said company from
95 block No. 3 in Jones' plat, in the town of Neenah, Doty Island, to Wolf River, and that the cars have been run over the same daily for more than two weeks past from the depot on Doty's Island to said Wolf River, and that therefore, according to the terms of the proposition (a copy of which is hereto annexed), the said company are entitled to the transfer of the bonds of said town deposited with you.

Dated at Menasha, Oct. 25, 1871.

WISCONSIN CENTRAL R. R. CO.,
By GARDNER COLBY, *President.*
[SEAL.] FREDERICK SCHNELLEN,
Chairman of the Town of Menasha.

STATE OF WISCONSIN,
County of Waupaca, Town of Weyauwega, ss:

I, Albert V. Balch, a commissioner of deeds for the State of New York, residing in the town of Weyauwega aforesaid, do hereby certify that Frederick Schnellen is the chairman of the board of supervisors of the town of Menasha, in the State of Wisconsin, and that his signature to the foregoing certificate is in his own hand and is genuine, as he has this day before me acknowledged.

In testimony whereof I have signed my name and affixed my official seal this 24th day of February, A. D. 1872.

[SEAL.] ALBERT V. BALCH,
96 *Commissioner of Deeds for the State of New York.*

COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk, City of Boston, ss:

On this 29th day of February, A. D. 1872, the above-named Gardner Colby, who is personally known to me to be the president of the said railroad company, made oath that the above written certificate by him

signed is true, and that the seal affixed thereto is the seal of said company, and was so affixed by its authority.

Witness my hand and official seal, at the city of Boston, the day and year aforesaid.

[SEAL.] SAM'L L. CURTIS, *Notary Public.*

Seventh. That on the 15th day of March, 1872, the said bank sent said certificate of stock to the chairman of the board of supervisors of said town, and on the same day delivered said bonds to said Wisconsin Central Railroad Company.

Eighth. That on the 17th day of April, 1872, the president of the said bank, Robert Lennox Kennedy, affixed to said bonds his certificate in the words following:

To the president of the National Bank of Commerce of New York:

97 The undersigned, Gardner Colby, president of the Wisconsin Central Railroad Company, formerly the Portage, Winnebago and Superior Railroad, and Fr. Schellen, chairman of the board of supervisors of the town of Menasha, Winnebago County, Wisconsin, do hereby certify that the iron has been laid on the track of road of said company from block No. 3, in Jones' plat, in the town of Neenah, Doty Island, to Wolf River, and that the cars have been run over the same daily for more than two weeks past from the depot on Doty's Island to said Wolf River. And that therefore, according to the terms of the proposition (a copy of which is hereto annexed), the said company are entitled to the transfer of the bonds of said town deposited with you.

Dated at Menasha, Oct. 25, 1871.

[SEAL.] WISCONSIN CENTRAL R. R. CO.
By GARDNER COLBY, *President*

(Signed) FREDERICK SCHNELLEN,
Chairman of the Town of Menasha.

STATE OF WISCONSIN,
County of Waupaca, Town of Weyanwega, ss:

I, Albert V. Balch, a commissioner of deeds for the State of New York, residing in the town of Weyanwega aforesaid, do hereby certify that Frederick Schnellen is the chairman of the board of supervi-
98 sors of the town of Menasha, in the State of Wisconsin, and that his signature to the foregoing certificate is in his own hand and is genuine, as he has this day before me acknowledged.

In testimony whereof I have signed my name and affixed my official seal this 24th day of February, A. D. 1872.

[SEAL.] ALBERT V. BALCH,
Commissioner of Deeds for the State of New York.

COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk, City of Boston, ss:

On this 29th day of February, A. D. 1872, the above-named Gardner Colby, who is personally known to me, and known to me to be the president of the said railroad company, made oath that the above-written certificate by him signed is true, and that the seal affixed thereto is the seal of said company and was so affixed by its authority.

Witness my hand and official seal, at the city of Boston, the day and year aforesaid.

[SEAL.] SAM'L S. CURTIS,
Notary Public.

I hereby certify that I have received certificates of which the above are copies, which certificates are on file in this bank.

April 17, 1872.

ROBERT LENNOX KENNEDY,
President of the National Bank of Commerce in New York.

99 Ninth. That in the month of November, 1872, the said town levied a tax to pay the interest upon said bonds, and collected about two-thirds of it and paid it over to the railroad company, when the further collection of said tax was injoined by the circuit court of the county of Winnebago in said suit of said Lawson, which injunction is still in force.

Tenth. That Lake Butte des Morts, a narrow lake about two thousand feet wide, lies between said Block Three in Jones' plat and the Wolf River, across which the route of said Wisconsin Central Railroad runs. That said company, instead of constructing a bridge of its own for its road across said lake, made an agreement with the Chicago & Northwestern Railway Co. to cross said lake upon that company's bridge, of which agreement the following is a copy:

This agreement, made and entered into this first day of May, A. D. 1871, by and between the Chicago & Northwestern Railway Company, party of the first part, and the Wisconsin Central Railro d Company, party of the second part, witnesseth:

The party of the first part, for and in consideration of the covenants and agreements herein contained on the part of the party of the
100 second part, doth hereby covenant and agree to and with the said party of the second part, that the said party of the second part, its successors and assigns, shall and may have the use of and right to operate for railroad purposes, in common with the said party of the first part, the bridge across Lake Butte des Morts, near Doty Island, in Wisconsin, and the right of way and use of ties across its land on the north side of said lake for a sufficient distance to enable said second party to make its connections therewith; also, the right of way and use of its ties from the south end of the bridge, including the bridge across the river to its depot grounds at Neenah Station, in Wisconsin, subject, however, to the regulations and stipulations hereinafter contained.

The said party of the second part, in consideration of the premises, hereby covenants and agrees to lay down and maintain a track, with the necessary switches and frogs, at its own expense and for its own use, from the point of intersection of its own right of way with that of the party of the first part through the whole line which it may use in common with the said party of the first part, and to pay to the said party of the first part monthly, at the end of each and every month during the
101 continuance of this agreement, one-half of the expense of maintaining and keeping in repair the line so used in common as aforesaid (including the bridges, roadbed and ties, as well as the expense of the necessary signal men, except, however, the iron, which each of said parties shall furnish and maintain for its own use), a statement of which expenses of maintaining said line, other than maintenance of the rails, shall be furnished to said second party by said party of the first part monthly, at the end of each and every month during the continuance hereof.

It is further mutually covenanted and agreed by and between the parties hereto, that the payment of said one-half of the aforesaid ex-

penses by said party of the second part shall be taken and accepted by the said first party in lieu of and as rental for the use of the line aforesaid and in full satisfaction thereof, and that said line, for the distance aforesaid, shall be used in common by the said parties, and that a signal shall be erected and maintained at joint expense, and no train of either company shall come upon the said common track until a signal for that purpose has been given; and that working trains of either company shall give way to all other trains, and freight trains to passenger
102 trains; but if trains of both companies of the same class shall come at the same time, the train of the party of the first part shall have preference, and the management, repairs, and maintenance of said common track and line shall be and remain in charge of said first party.

It is further mutually agreed that this agreement shall continue and remain in force for the period of twenty years hereafter next ensuing, but either party shall have the right to terminate the same upon giving to the party one year's notice in writing of its intention to terminate the same, but such notice shall not be given earlier than the first day of July, 1876.

In witness whereof the said party of the first part has caused these presents to be subscribed by its president or vice-president, attested by its secretary or assistant secretary, and the said party of the second part has caused these presents to be subscribed by its president and secretary the day and year first above written.

{ C. & M. W. R'Y } CHICAGO AND NORTHWESTERN RAILWAY CO.,
{ CO. SEAL. } By M. L. SYKES, JR., *Vice-President.*

Attest:
A. L. PRITCHARD, *Secretary.*

{ WIS. CENT. R. } WISCONSIN CENTRAL RAILROAD CO.,
{ R. CO. SEAL. } By GEO. REED, *President.*

Attest:
CURTIS REED, *Secretary.*

103 Eleventh. That said Wisconsin Central Railroad Co., in running across said bridge and coming to said block three, runs on the line of the Chicago & Northwestern Railway Company about one mile; that except that distance the said Wisconsin Central Railroad Co. has constructed its road from said block three to the Wolf River.

Twelfth. That on the 23rd day of November, 1870, the said Portage, Winnebago & Superior Railroad Company voluntarily consolidated its franchise and capital stock with the Portage, Stevens Point and Superior Railroad Company, a corporation incorporated by and under chap. 369 of the laws of Wisconsin, 1870, under an agreement of consolidation filed in the office of the secretary of state of the State of Wisconsin, December 5th, 1870.

Thirteenth. That on the 4th day of February, 1871, the name of the Portage, Winnebago and Superior Railroad Company was changed to the Wisconsin Central Railroad Company, under the provisions of chap. 27 of private and local laws of Wisconsin, 1871. That by chap. 31, gen'l laws of Wisconsin, 1871, approved March 1, 1871, the said chap. 126 of the gen'l laws of 1869, was amended as follows:

104 "SEC. 2. All bonds & other securities which have heretofore been voted any county, town, incorporated city, or village under the provisions of said chap. 126 of the gen'l laws of 1869 to said railroad under its name of Portage, Winnebago and Superior Railroad Company, shall be issued and delivered to said company by and under its said name of

Wisconsin Central Railroad Company, and such bonds or other securities so issued and delivered shall have in all courts and places and with all parties the same force and effect as though the name of said company had not been changed and the same had been issued and delivered to it under its name of Portage, Winnebago and Superior Railroad Company."

Fourteenth. That on the first day of July, 1871, the said company voluntarily consolidated its franchises and capital stock with the Manitowoc & Minnesota Railroad Company, a corporation incorporated and extended under and by virtue of chapter 342 of the private & local laws of Wisconsin for 1868, chapters 255 and 302 of the private & local laws for 1869, and chapter 476 of the private & local laws for the year 1871, by an agreement thereto filed in the office of the secretary of state of the State of Wisconsin, July 10, 1871.

105 Fifteenth. That by chapter 127 of the gen'l laws of Wisconsin for 1874, the city of Menasha was incorporated and made capable of being sued for the indebtedness of said town of Menasha and liable to pay three-fourths of any recovery.

Sixteenth. That the plaintiff bought the bonds of which the coupons are in suit from Gardner Colby, president of the Wisconsin Central Railroad Company, for a valuable consideration, without notice, other than appears on the face of the bonds and certificates printed on them, as follows: Bond No. 16, on the 11th December, 1873; bonds Nos. 12, 13, 14, 15, 18, 19, 37, 38, & 39, on the 12th September, 1874.

Upon the trial of this cause, the following questions occurred:

First. Whether the coupons executed and delivered and there being upon the bonds to which they were annexed, such certificates as herein before set forth and produced upon the trial by the plaintiff created a liability against said town in favor of the plaintiff under the pleadings and proofs.

Second. Whether the court should have instructed the jury that the construction of such railroad by the Wisconsin Central Railroad Company without constructing the same across Lake Butte des

106 Mort, but securing the right to cross said lake on the bridge of the Chicago and Northwestern Railway Company under the contract above set forth, was not a performance of the conditions of the proposition to construct a railroad from block three, in Jones plat, on Doty's Island, to Wolf River.

The court submitted to the jury these two questions:

First. As to the facts bearing upon the certificate which the text of the bond required, whether there has been under all the facts, as they have been presented to you, a substantial compliance with the terms of the proposition in the terms of the bond.

Secondly. Whether there has been a substantial compliance on the part of the railroad company as to the conditions of the construction of the road between Doty's Island and Wolf Creek.

And as to the latter question instructed the jury as follows:

Now, if there is nothing on the bond to render it invalid, the only other question that can arise in the case is whether the consideration for which this bond was given has failed so as to render it inoperative in the hands of the plaintiff. That leads to the other part of the consideration, viz: was the road constructed from block three of

107 Jones plat, in the town of Neenah, on Doty's Island, to the Wolf River. That had to be done, undoubtedly, before these bonds were to be valid—before there was a sufficient consideration to render them available to the plaintiff in the view that we have taken of the other part of the case.

We are met in considering this question by a decision of the supreme court of this State, which declares that under certain facts, as they appeared to that court, this condition had not been complied with. It is necessary that we should consider the peculiar circumstances connected with that case in order to appreciate the effect of the decision. Mr. Lawson, a citizen of Menasha, filed a bill in the court of this State for the purpose of restraining the issuing of these bonds. The bill was demurred to by the defendants who appeared in the case. A decision of the subordinate court was made upon the demurrer, and it went to the supreme court of the State, and is reported in the Thirty-third Wisconsin Reports (Lawson against Schnellen and others). Upon this bill as it was filed, and under its allegations as they were set forth, it went to the supreme court, and the court decided that this condition has not been complied with, namely, that the road had not been constructed from Doty's Island to Wolf River. Now, this opinion of
108 the supreme court may be binding upon us, and we do not consider it necessary to controvert the position taken in that opinion. We need not say that if this case appeared to us as it did to the supreme court, upon the allegations of that bill, that we would decide differently from that court.

The ground, as we understand it, upon which the supreme court put the case and authorized the injunction was, that the railroad company had not constructed its road, according to the proposition which it made, from Doty's Island to Wolf River. It is necessary that we should make some observation upon this point in order to understand this part of the case.

What was the object of the railroad company? If there had been a stream to cross between Doty's Island and Wolf Creek, and, on the line of the Central Railroad, another railroad had crossed that stream, and constructed a bridge, would it be a violation of the condition of this proposition for the Wisconsin Central Railroad, in its passage from Doty's Island to Wolf Creek, to cross this bridge? Would that prevent it from being an independent line of road? It would still be an independent line of road, although it might have utilized some part of another railroad on its transit.

Now, this opinion of the supreme court contains one allegation of the bill, which is this:

109 "Because as the fact is, the said Wisconsin Central Railroad Company have adopted as part of their line, proposed to be built by them in said proposition of May 10, 1870, the line of railroad of the Chicago and Northwestern Railway Company, and do not propose, for the extent of some miles, to build, have, or maintain, between the points specified in said proposition any independent line of road, but to adopt the line and use for that distance the road track of the Northwestern Railway Company."

Now, I do not believe, if the facts had been in evidence before the supreme court in that case which are before us here, that decision would have been made. For I do not think that court would have decided that the mere use in the crossing of a stream on another line of railroad would have prevented it from being an independent line of road. The object of the people of Menasha was to have a railroad from Menasha into the interior of the State, and to Lake Superior. Was that object destroyed, even impaired, providing a small portion of another line of railroad was used in the construction of the line of road from Doty's Island to Lake Superior? Now, in this case it is conceded that the allegations in that bill, and upon which the supreme court made that decision, is not proved,

namely, so far as we know the Wisconsin Central Railroad Company has not used "several miles of the Chicago and Northwestern Road," and did not use "several miles of the Chicago and Northwestern Road" at the time these bonds were issued.

It is said that from the point where the Wisconsin Central Railroad runs upon the track of the Chicago and Northwestern Railway Co. to cross the bridge to the point where it leaves the track of the last company's road after crossing the bridge is only about a mile. Now, if that is so the question is whether, because the Wisconsin Central Road had used the bridge of the Chicago and Northwestern Road in crossing this lake, and in reaching its terminal point on Doty's Island, the conditions which was contained in the proposition of the railroad is nullified or destroyed. It is to be observed that there is not one word in the proposition about the construction of a bridge across Lake Butte des Morts or of any bridge between Wolf River and Doty's Island.

True, looking at the geography of the country, it was necessary that the railroad being finished between the two points should have a bridge. But the question is whether because it crossed on the bridge of the Chicago and Northwestern Road, that therefore it ceased to be an independent line of railroad between Doty's Island and Wolf River.

111 We are not prepared to say that it did. We are not prepared to say that the mere fact that it used a bridge of the Northwestern Road destroyed or prevented the consideration from being operative. We cannot say that, thereby, there was not an independent line of road. The only thing that can be said is this, that it was the object of the town to have a road always connecting these two points, so that it should be extended from the city to Lake Superior; and, inasmuch as this was a bridge of the Northwestern Road, therefore it depended upon terms to be prescribed by that company whether the Wisconsin Central Railroad should run across that bridge. The mere fact that it did cross on the bridge of the Northwestern Company does not prevent the construction from being completed.

Now, if these facts are believed by the jury, the town of Menasha has got what it desired. It has a railroad from Wolf River to Doty's Island, or within its own limits. And there can be no doubt that it may be said as to one objection that has been made, that it will always have a line of railroad between the town and Wolf River and Stevens Point. At any rate, as we now stand inquiring into the consideration for these bonds, if these are the facts, the town has a railroad, and therefore has accomplished the object for which the contribution was made.

112 Again, there is another aspect of the case that bears with great weight upon the town and its inhabitants. It is this: That the town of Neenah did not contribute its portion, as it was understood it would. The terminus of the road was placed on Doty's Island, as was agreed; but Neenah having failed, what was done by the railroad company?

Now, in looking into the consideration, that is an important fact to be regarded by the jury. That portion of the road on Doty's Island was taken up, and the road was run right into the town of Menasha, and the depot is there. It becomes, therefore, a question whether the town of Menasha has not gained all that it sought to accomplish by this contribution—whether the objection is not merely a legal technicality as affecting the contract made with the railroad company.

Third. Whether a delivery of the stock of the Wisconsin Central Railroad Company, after consolidation with the Portage, Winnebago & Superior Railroad Company and with the Manitowoc and Minnesota Railroad Company, as hereinbefore set forth, was a compliance with the terms of such proposition?

113 Fourth. Whether said town was authorized to issue its bonds to the Wisconsin Central Railroad Company after the several consolidations hereinbefore set forth.

And on which said questions the said judges were opposed.

Wherefore, on motion of the defendants, by their counsel, that the points in which the disagreement hath happened may, during the term, be stated under the direction of the judges, and certified under the seal of the court, and made part of the record of this cause to the Supreme Court of the United States to be finally decided, it is ordered that the foregoing facts of the case and the questions on which the disagreement of opinion hath happened, and which is made under the direction of the judges, be certified according to the request of the defendants, by their counsel, and the law in that case made and provided.

OCTOBER 1ST, 1877.

This day came the defendants, by their attorneys, and filed the bond of Publius V. Lawson, Phillip Verbeck, and S. S. Roby, in the sum of five hundred dollars, conditioned that the said defendants shall prosecute a writ of error to effect and answer all damages & costs if
114 they fail to make their plea good; which bond is approved by the district judge, and is as follows, to wit:

Bond for costs on writ of error.

Know all men by these presents that we, Publius V. Lawson, of the city of Menasha, Wisconsin, and Phillip Verbeck & S. S. Roby, of same place, are held and firmly bound unto Rowland G. Hazard, of the State of Rhode Island, in the full and just sum of five hundred dollars, to be paid to the said Rowland G. Hazard, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this twenty-fourth day of September, in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas lately, at a circuit court of the United States held in and for the eastern district of the State of Wisconsin, in a suit depending in said court between Rowland G. Hazard, plaintiff, and The Town of Menasha and The City of Menasha, judgment was rendered against the said Town of Menasha and The City of Menasha, and the said town and city having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Rowland G. Hazard citing and admonishing to be and appear at a Supreme Court of the United
115 States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Town of Menasha and City of Menasha shall prosecute said writ to effect and answer all damages and costs if they fail to make their pleas good, then the above obligation to be void; else to remain in full force and virtue.

PUBLIUS V. LAWSON. [L. S.]
PHILIP VERBECK. [L. S.]
S. S. ROBY. [L. S.]

Sealed and delivered in the presence of—
ELBRIDGE SMITH.
JOHN POTTER, Jr.

Approved by— CHAS. E. DYER, *Dist. Judge.*

U. S. OF AMERICA,
Eastern District of Wisconsin, ss:

P. V. Lawson, Phillip Verbeck, & S. S. Roby, being severally sworn, each for himself says that he is a freeholder of the State of Wisconsin, and is worth the sum of one thousand dollars in property not exempt from execution, over and above all debts and liabilities.

P. V. LAWSON.
PHILIP VERBECK.
S. S. ROBY.

Sworn to before me this 24th Sept., A. D. 1877.

ELBRIDGE SMITH,
U. S. Commissioner, Eastern Dist. Wis.

Whereupon a writ of error and citation issued, and a copy said writ of error lodged for the defendant in error.

116 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file and remaining of record in my office, being a full and complete transcript of the record and proceedings in the case of Rowland G. Hazard vs. The Town of Menasha et al.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in said district, this 6th day of October, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the 102nd.

[SEAL.] EDWARD KURTZ, *Clerk.*

117 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States of America for the eastern district of Wisconsin, greeting:

Because in the record and proceeding, as also in the rendition of a judgment in a plea which is in the said circuit court of the United States of America for the eastern district of Wisconsin, before you, between Rowland G. Hazard, plaintiff, and The Town of Menasha and the City of Menasha, defendants, a manifest error hath happened, to the great damage of the said The Town of Menasha and the city of Menasha as by the complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf. You are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October instant, in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error that of right and according to law and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this first day of October, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the 102nd.

EDWARD KURTZ,
Clerk of the U. S. Circuit Court East'n Dist. of Wis.

(Indorsed:) Filed October 1, 1877, Edw. Kurtz, clerk.

118 The United States of America to Rowland G. Hazard, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October instant, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Wisconsin, wherein The Town of Menasha and the City of Menasha are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Charles E. Dyer, district judge of the United States for the eastern district of Wisconsin, at the city of Milwaukee, in said district, this first day of October, A. D. 1877, and of our Independence the 102nd.

[SEAL.] CHAS. E. DYER,
Dist. Judge.

We accept service of the above citation this 5th day of October, A. D 1877.

DIXON, HOOKER, WEGG & NOYES,
Attorneys for Rowland G. Hazard.

(Indorsement on cover:) No. 284. The Town of Menasha and the City of Menasha, plaintiffs in error, vs. Rowland G. Hazard. E. Wisconsin C. C. U. S. filed 13th October, 1877.

REC. 284—6

OFFICE SUPREME COURT U.S.
FILED
APR 2 1880
D. W. MIDDLETON, Clerk.

IN THE

Supreme Court of the United States.

No. 284.

THE TOWN OF MENASHA
and the
CITY OF MENASHA,
Plaintiffs in Error.

vs.

ROWLAND G. HAZARD.

In error to the Circuit Court of the United States for the Eastern District of Wisconsin.

E. MARINER,
Attorney for Plaintiffs in Error.

J. H. YEWDALE & SONS, PRINTERS MILWAUKEE.

Supreme Court of the United States.

No. 284.

THE TOWN OF MENASHA and the CITY OF MENASHA, plaintiffs in error.

vs.

ROWLAND G. HAZARD.

In error to the Circuit Court of the United States for the Eastern District of Wisconsin.

This case comes up on a certificate of division of opinion.

The action is to recover upon coupons from certain bonds alleged to have been issued by the Town of Menasha, to which the City of Menasha was made a defendant by amendment, it having been organized out of a part of the territory of the town, and by its charter liable for three-fourths of the town's indebtedness on these bonds.

The complaint counts upon bonds, a copy of one of which is appended to the answer of the City of Menasha at folio 92 of the record. After the obligation to pay the bond states.

"This bond and the coupons or interest warrants thereon shall when due, be receivable for taxes to be collected in said town, and there shall be annually levied upon the property in said town, a tax sufficient to pay the interest upon this bond and to raise a sinking fund to pay the principal when the same shall become due and payable in the manner provided by chapter 126 of the general laws of 1869 of said state, *and this bond shall be valid only when it is thereon duly certified that it has been duly certified that the conditions upon which it was voted, issued and deposited by said town have been performed.*"

"This bond is one of a series amounting in the aggregate to fifty thousand dollars, and is issued in pursuance of a vote of the legal voters of said town on the 4th day of June, 1870, under and by virtue of an act of the legislature of the State of Wisconsin, entitled "An act to authorize certain counties, towns, cities and villages to aid in the construction of the land grant railroad from Portage City and from Doty's Island to Lake Superior," approved March 9th, 1869, and in pursuance of an act of the legislature of said state, approved February 4th, A. D. 1871, entitled "An act to change the name of the Portage, Winnebago and Superior Railroad Company," and of an act of the same legislature, approved March 1st, A. D. 1871, amendatory of said chapter 126 of the general laws of 1869 of Wisconsin."

The answer denies that the Town of Menasha did for a good and valuable consideration deliver them to the Wisconsin Central Railroad Company, that plaintiff is the lawful holder and owner for a good and valuable consideration; that the bonds are negotiable, and avers that they were signed by the officers of the town without

authority, and avers that the plaintiff received the same with notice thereof and that they were without consideration.

The answer states that the Portage, Winnebago and Superior Railroad Company made a proposition in writing to the town to lend its aid under said chapter 126 of the laws of 1869, whereby it was provided.

First. That in consideration of the constructing of a railroad from block three in Jones plat in the town of Neenah on Doty's Island to the Wolf River and 500 shares of the capital stock of the Company, the town should pay to the company or its assigns $50.000.

Second. That said town should secure payment by its corporate bonds, which should provide that they and the coupons should be receivable for taxes, and that there should annually be levied on the property in said town a tax sufficient to pay the interest and to raise a sinking fund to pay the principal, and should also provide *that said bonds shall be valid only when it is thereon duly certified that the conditions upon which they were voted, issued and deposited by said town have been performed.*

Third. That the proper officers of the town should issue the bonds as required by law, and on notice being received by the chairman of the Board of Surervisors of said town from the National Bank of Commerce of New York, that the Company has deposited therein to the credit of the town the shares of its capital stock, he should deposit in said bank, said bonds *with instructions to hold the same on deposit in trust for said town until such time as there shall be filed in said bank, a properly authenticated certificate signed by the chief officer of the company and the chairman of the board of supervisors of said town or the Secretary*

of State, that the iron has been laid upon the track of road and cars have been run over the same through from the depot on Doty's Iland or in said town to the Wolf River, when the said bonds should become the absolute property of and be held by said bank, subject to the order of the company or its assigns—*and that such certificate should authorize and require the president of said bank, to certify upon the back of each of said bonds that the conditions upon which the said bonds were voted, issued, and deposited by said town have been performed, and in case the company fails to comply with said conditions, the said bonds shall be returned to said town on demand of the authorities thereof.*

Fourth. That on the acceptance of the proposition and as soon as the right of way and depot grounds have been secured by the company, it will commence the construction of the track of said portion of its road, and have the same completed and the iron laid thereon, and cars run over the same within one year from the time the bonds have been issued and deposited in the bank. Provided, that the like proposition submitted to the town of Neenah, shall be accepted and its conditions fulfilled by said town.

Fifth. In the event Neenah shall fail to accept and fulfill the terms of said proposition the Company proposes, that if the required additional $50,000 shall be furnished by individual subscriptions to its stock, satisfactorily secured, the depot shall be located and its road constructed therefrom at such place in said town (Menasha) and on such route as may be agreed upon between the company and the authorities of said town, and under the foregoing proposition as hereby qualified.

The answer states, that the proposition submitted to

vote provided that the certificate referred to in the third article should be signed by the chief officers of the company *and by the Board of Supervisors of said town.*

That the name of the Portage, Winnebago & Superior Railroad Company was changed to the Wisconsin Central Railroad Company, and it was substituted to all the liabilities and rights of the first named company under said proposition.

That neither company built the railroad from block 3, Jones' Plat, in the town of Neenah, nor from any place in the town of Menasha to the Wolf River, nor laid the iron upon the track, nor run cars over the same. That the company adopted for such portion and route of its railroad the railroad and track of the Chicago and Northwestern Railway Company, and had refused to construct and had abandoned the construction of a railroad from said block 3 in Jones Plat, or from a place in the town of Menasha, as provided for in said proposition. That the company failed to build that portion of the road, and adopted the road and track of the Chicago and Northwestern Railway Company. That the Board of Supervisors of Menasha would not execute and deposit the bonds provided for by said proposition, and did not make and deliver the certificate therein provided for; that the company induced the chairman of said board, with the clerk of said town, without the knowledge or consent of said board, to make and execute a series of bonds for $50,000 on or about November 1, 1871, (the bonds referred to in plaintiffs complaint) which were then delivered to Gardner Colby, the president of the company.

That on July 15th, 1871, Publius V. Lawson, in behalf of himself as a taxpayer, and all other taxpayers of said

town, commenced an action in the Circuit Court of Winnebago county, to restrain the town of Menasha and the officers thereof from issuing any of said bonds, and the Wisconsin Central Railroad, its officers and agents from transferring or delivering the same, because, among other reasons, the Wisconsin Central Railroad had not located or constructed their road from said block 3, and have adopted as part of their line proposed to be built by said proposition, the line of railroad of the Chicago and Northwestern Railway Company.

That an injunction order was duly made and served upon said town and its officers, restraining them from signing, issuing or delivering said bonds.

That an injunction order was made in said action restraining all officers of said town from making any certificate that the iron had been laid upon the track of the Wisconsin Central railroad, or that the cars have been run over the same, through from Doty's Island in the town of Neenah, to the Wolf River, and from making any certificate of any such fact and from making any certificate that the conditions upon which any bonds voted to said Wisconsin Central Railroad Company by said town were voted and issued and deposited by said town, had been performed by said railroad company, and from making any certificate whatever to give validity to said bonds, and that such order was served upon all the officers of said town, before any certificate was made. That an injunction order was made in said action restraining the Wisconsin Central Railroad Company from receiving or delivering any of said bonds, which was served upon said company before the town had delivered any of said bonds.

That said orders are still in force and that said action is pending.

That in December the officers of the town of Menasha attempted to collect a special railroad tax in the same warrant with the general taxes of 1872, to pay the coupons due on said bonds, and on Feb. 18th, 1873, they were, by an order made in said action restrained from levying or assessing or collecting any tax to pay any interest or principal of any bonds purporting to be issued to or for the use of the Wisconsin Central Railroad Company under or by virtue of said election held on the 4th of June, 1870, which order is in full force.

That plaintiff received said bonds with notice of the pendency of such action.

That the supervisors of said town, the town clerk, and The Wisconsin Central Railroad Company were parties defendant and served with process in said action.

The answer further states that said bonds provide that they shall be valid only when it is thereon duly certified that the conditions upon which they are voted, issued and deposited by said town have been performed, also that the proposition provided for the making of certain certificates to be deposited in the bank, and for a certificate to be endorsed on each of the bonds by the president of the bank, according to the third article of the proposition hereinbefore set out: That no certificates such as specified in the bonds and in the proposition were ever made, but that the only certificates made were exhibits D and E, as follows:

Exhibit D.

To the President of the National Bank of Commerce of New York:

The undersigned Gardner Colby, President of the Wisconsin Central Railroad Company, formerly the Portage,

Winnebago and Superior Railroad Company, and Fr. Schnellen, chairman of the board of supervisors of the town of Menasha, Winnebago County, Wisconsin, do hereby certify that the iron has been laid on the track of road of said company from block No. 3, in Jones's Plat, in the town of Neenah, Doty Island, to Wolf River, and that the cars have been run over the same daily for more than two weeks past, from the depot on Doty's Island to said Wolf River; and that therefore according to th terms of theproposition (a copy of which is hereto annexed) the said company are entitled to the transfer of bonds of said town deposited with you.

[SEAL.] WISCONSIN CENTRAL R. R. CO.
(Signed.) By GARDNER COLBY, President.
FREDERICK SCHNELLEN,
Chairman of the Town of Menasha.

STATE OF WISCONSIN,

County of Waupaca, Town of Weyauwega, ss:

I, Albert V. Balch, a commissioner of deeds for the State of New York, residing in the town of Weyauwega, do hereby certify that Frederick Schnellen is the chairman of the board of supervisors of the town of Menasha in the State of Wisconsin, and that his signature to the foregoing certificate is in his own hand and is genuine as he has this day before me acknowldged.

In testimony whereof I have signed my name and affixed my official seal this 24th day of February, A. D. 1872.

[SEAL.] (Signed.) ALBERT V. BALCH,
Commissioner of Deeds for the State of New York.

COMMONWEALTH OF MASSACHUSETTS, } ss.
COUNTY OF SUFFOLK, CITY OF BOSTON. }

On this 29th day of February, A. D. 1872, the above named Gardner Colby, who is personally known to me, and known to me to be the president of the said railroad company, made oath that the above written certificate by him signed is true and that the seal affixed thereto is the seal of said company and was s. affixed by its authority.

Witness my hand and official seal at the city of Boston the day and year aforesaid.

[SEAL.] (Signed.) SAM'L S. CURTIS,
Notary Public.

Exhibit E.

I hereby certify that I have received certificates of which the above are copies, which certificates are on file in this bank, April 17th, 1872.

ROBERT LENNOX KENNEDY,
President of the National Bank of Commerce, N. Y.

By Ch. 126, General Laws, 1869, entitled "An act to authorize certain counties, towns, cities and villages to aid in the construction of the land grant railroad from Portage City and from Doty's Island to Lake Superior.

> The State of Wisconsin empowered certain towns to vote aid to construct certain railroads, which should deliver a proposition in writing to the town clerk, stating the amount, terms, conditions and considerations, upon which the money or bonds would be required to be paid or delivered to the railroad company, and provided that he should cause notice of an election to be published containing a full statement of the proposition.

It empowered the chairman of the town supervisors and town clerk, if the official returns of such election shall indicate that a majority was cast "for the railroad proposition" to issue the bonds and deliver them to the railroad company *on performance by it of the terms and conditions of the proposition.*

It appears from the certificate of division as follows:

(Fol. 85.) On the 10th of May, 1870, the Portage, Winnebago and Superior Railroad Company consolidated from the companies mentioned in said act, delivered to the town of Menasha a proposition, that in consideration of the construction by said company of a single track railroad from block 3 in Jones' Plat on Doty's Island to the Wolf River and 500 shares of its capital stock, the town should issue its bonds for $50.000.

(Fol. 86.) In the second article the proposition stipulates that besides the usual conditions, said bonds should provide *"that said bonds shall be valid only when it is thereon duly certified that the conditions upon which they were voted, issued and deposited by said town have been performed."*

(Fol. 87.) In the third article it further stipulates, that on notice from the National Bank of Commerce of New York, of the deposit by the company therein of the stock to the credit of the town, the chairman of its board of supervisors should deposit the bonds in said bank, *with instructions to hold them in trust for said town until there shall be filed in said bank a properly authenticated certificate signed by the chief*

officer of the company and the chairman of the board of supervisors of said town, or the secretary of state, that the iron has been laid upon the track of the road, and cars have been run over the same through from the depot on Doty's Island, or in said town to the Wolf River, when the bonds should become absolute property of the bank, subject to the order of the company.

It is further stipulated that such certificate *should authorize and require the president of said bank to certify upan the back of each of said bonds that the conditions upon which the said bonds were voted, issued and deposited by said town have been perfomed.*

(Fol. 88.) By the fourth article it was agreed that in consideration of the acceptance of the proposition and its fulfillment by the town, the company would issue and deposit to the credit of the town in said bank, the shares of stock, *to be delivered to said town at the time of delivery of the bonds to the company.*

That it would complete that portion of its road lay the iron, and run cars over the same within one year from the deposit of the bonds in said bank, provided a like proposition shall be accepted and fulfilled by the town of Neenah.

(Fol. 89.) By the fifth article, it was provided that in case Neenah fail to accept and fulfill such proposition, the company further proposes to the town of Menasha, that if the required $50.000 shall be secured to be paid to the company, that it will locate its depot within that town and construct its road on such route as may be agreed upon with

the authorities of the town, under the proposition so qualified.

(Fol. 90.) The proposition was carried at the election held on the 4th of June, 1870, modified by requiring the certificate provided for in the third article to be signed *by the board of supervisors of said town* instead of the chairman.

(Fol. 103.) On the 4th of February, 1871, the name of said railroad was changed to the Wisconsin Central Railroad Company by an act of the legislature, and on March 1, 1871, by an act of the legislature, it was enacted that bonds voted under Chap. 126, General Laws of 1869, should be issued to said company.

(Fol. 91.) The Wisconsin Central Railroad deposited its stock with the bank.

About the 1st of June, 1871, the chairman of the board of supervisors and the town clerk made bonds of the town, the issue of which was enjoined by the Circuit Court of Winnebago County at the suit of a tax payer, which injunction is in force, that these bonds were burned.

(Fol. 92.) On the 25th of October, 1871, the chairman of the board of supervisors and town clerk issued and delivered to said bank a series of 50 bonds for $1000 each, bearing date 1st June, 1871, whereby the town of Menasha promised to pay the *Wisconsin Central Railroad Company or to the bearer hereof* at said bank, said sum in 20 years from date, with semi-annual interest on presentation of the coupons annexed.

After stating that the bonds and coupons shall be receivable for taxes, and that annually a tax shall be levied to pay the interest and raise a sinking fund, as provided in said Ch. 126 of the laws of 1869, it is stipulated on the face of the bond, *"and this bond shall be valid only when it is thereon duly certified, that it has been duly certified, that the conditions upon which it was voted, issued and deposited by said town have been performed."*

The bond then states that "it is issued in pursuance of a vote of the legal voters of said town on the 4th of June, 1870, under and by virtue of an act of the legislature of the State of Wisconsin entitled, "An act to authorize certain counties, towns, cities and villages to aid in the construction of the land grant railroad from Portage City and from Doty's Island to Lake Superior," approved March 9th, 1869, and in pursuance of an act of the legislature of said state, approved Feb. 4th, A. D. 1871, entitled, "An act to change the name of the Portage, Winnebago and Superior Railroad Company," and of an act of the same legislature approved March 1, A. D. 1871, amendatory of said Ch. 126 of the General Laws of 1869 of Wisconsin.

(Fol. 94.) To which bonds were annexed coupons as follows, (the blanks being filled) signed by the chairman and clerk of the town.

(Fol. 6.) [$35.00] [Gold.] The Town of Menasha, Wisconsin, will pay the bearer, at the National Bank of Commerce, New York, $35.00 in gold, on the first day of . 187 , being six

months interest on bond No. , for one thousand dollars.

(Fol. 95.) That a certificate as follows was delivered to said bank: "To the President of the National Bank of Commere of New York. The undersigned Gardner Colby, President of the Wisconsin Central Railroad Company, formerly the Portage, Winnebago and Superior Railroad and Fr. Schnellen, chairman of the board of supervisors of the town of Menasha, Winnebago County, Wisconsin, do hereby certify that the iron has been laid on the track of road of said company from Block No. 3, in Jones' Plat, in the town of Neenah, Doty's Island, to Wolf River, and that the cars have been run over the same daily for more than two weeks past, from the depot on Doty's Island to said Wolf River, and that therefore, according to the terms of the proposition, *a* (*copy of which is hereto annexed,*) the said company are entitled to the transfer of the bonds of said town deposited with you.

Dated at Menasha, Oct. 25th, 1871.

[R. R. Co.'s SEAL.]

WISCONSIN CENTRAL R. R. CO.
By GARDNER COLBY, President.
FREDERICK SCHNELLEN,
Chairman of the Town of Menasha.

(Fol. 95–6.) On the 24th of February, 1872, Schnellen's signature was authenticated by a certificate of acknowledgement taken before a commissioner of deeds for the State of New York, residing in Wisconsin, and on the twenty-ninth of same month

Colby's signature and the seal of the company were authenticated by a notary public in Massachusetts. On the 15th of March, 1872, the bank sent the certificate of stock to the chairman of the board of supervisors and delivered the bonds to the Wisconsin Central Railroad Company.

That on the back of each bond was the foregoing certificate with the acknowledgements and the following:

(Fol. 8.) "I hereby certify that I have received certificates of which the above are copies, which certificates are on file in this bank. April 17, 1872.

ROBERT LENNOX KENNEDY,
President of the National Bank of Commerce, N. Y.

(Fol. 99 to 103.) That in November, 1872, the town levied a tax to pay the interest and collected about two thirds and paid it to the company, when the further collection was enjoined in said suit, which injunction is still in force.

That Lake Butte des Morts, abont 2000 feet wide lies between Block 3 in Jones' Plat and the Wolf River, across which the route of the railroad runs; that instead of constructing a bridge of its own for its road across said lake, the railroad company use the bridge of the Chicago & Northwestern Railway Company, under a license, dated May 1, 1871, for 20 years, determinable by either party upon one year's notice in writing after July 1, 1876. That thereby the Wisconsin Central Railroad runs about one mile on the line of the Chicago & Northwestern Railway Company and

with that exception has constructed its road to the Wolf River.

(Fol. 103.) That on the 23rd of November, 1870, the Portage, Winnebago and Superior Railroad Company consolidated with the Portage, Stevens Point and Superior Railroad Company.

That on the 4th of February, 1871, the name of the Portage, Winnebago and Superior Railroad Company was changed to the Wisconsin Central Railroad Company by Ch. 27, P. and L. Laws of Wisconsin of 1871, and by Ch. 31 of the General Laws of Wisconsin, 1871, approved March 1, 1871, it was enacted that all bonds and other securities which had been voted under Ch. 126, General Laws of 1869, to the Portage, Winnebago and Superior Railroad Company, should be issued and delivered to the Wisconsin Central Railroad Company.

(Fol. 104.) That on the 1st of July, 1871, said Company consolidated with the Manitowoc and Minnesota Railroad Co.

(Fol. 105.) That by Ch. 127, Gen. Laws of Wisconsin, 1874, the city of Menasha was incorporated and liable for three-fourths of indebtedness of the town of Menasha.

That plaintiff bought the bonds, the coupons from which are in suit, of Gardner Colby, president of the Wisconsin Central Railroad Co., for a valuable consideration, without notice, other than appears on the face of the bonds and certificates printed on them; on Dec. 11th, 1873, bond No. 16, and Sept. 12th, 1874 the remainder.

(Fol. 105.) On the trial of the cause there was a division of opinion on the following questions:

1st. Whether the coupons executed and delivered and there being upon the bonds to which they were annexed such certificates as herein before set forth and produced upon the trial by the plaintiff created a liability against said town in favor of the plaintiff under the pleadings and proofs?

(Fol. 106.) 2d. Whether the Court should instruct the jury that the construction of such railroad by the Wisconsin Central Railroad Company, without constructing the same across Lake Butte des Morts, but securing the right to cross said lake on the bridge of the Chicago & Northwestern Railway Company under the contract above set forth, was not a performance of the conditions of the proposition to construct a railroad from Block 3 in Jones' Plat, on Doty's Island to Wolf River?

(Fol. 112.) 3d. Whether a delivery of the stock of the Wisconsin Central Railroad Company after consolidation with the Portage, Stevens Point and Superior Railroad Company, and with the Manitowoc and Minnesota Railroad Company, as hereinbefore set forth, was a compliance with the terms of such proposition?

(Fol. 103.) 4th. Whether said town was authorized to issue its bonds after the several consolidations before set forth.

The first question should have been answered in the negative.

The second question should have been answered in the affirmative. The court should have instructed the jury

that until the Wisconsin Central Railroad Company had acquired by construction or by purchase, a railroad of its own, from Block 3 in Jones' Plat to the Wolf River, that the conditions upon which the bonds were voted had not been performed.

The third question should have been answered in the negative.

The fourth question should have been answered in the negative.

We understand the first question certified to embrace only the inquiry as to whether the bonds upon their face unaided by proof of compliance with conditions and not embarrassed with proof of non-performance of conditious import a liability of the town, and that the second question starts inquiry as to whether conceding that the bonds do not impart a liability upon their face, a liability is established by proving a modified performance of the conditions upon which the bonds were voted.

And that the third and fourth questions start the inquiry as to whether the consolidation of the company which made the propositions with the Manitowoc & Minnesota Railroad Company, incorporated to carry out an entirely different enterprise pending the performance of the contract by the first company relieved the town from its liability to take and pay for the stock in the first company, there being at the date of the submission and acceptance of the proposition no law authorizing such consolidation.

I.

Do the bonds which were offered in evidence with the coupons attached import a liability on their face?

This case, although an action on a bond issued to aid a railroad, differs from the numerous cases decided in this court, in the particulars, that the bond is not negotiable and that there are no estopples on its face. The bonds providing in terms that they shall be valid only when a certain certificate is made thereon, the promise of payment is not absolute, but contingent, and therefore they are not negotiable.

1, Daniel on Negotiable Instruments, Sec. 41,lays down the rule: "In the third place the fact of payment must be certain, the instrument must be payable unconditionally, and at all events to be negotiable."

See cases cited in note.

Chitty on Bills, 9 Am. Ed. pg. 154: "The money must be payable at all events, not depending on any contingency, either with regard to event, or with regard to fund out of which payment is to be made."

Nunez vs. Dautel, 19, Wall. 592. Held that a note payable "as soon as the crop can be sold or the money raised from any other source," was not a promissory note.

In Parsons vs. Jackson, 99 U. S., 434. Held that where, in a bond payable to bearer, the amount to be paid is left indefinite, (but could be rendered certain) and the indorsement of the president, provided for in the bond, to determine the place of payment, was signed, but not filled in with a place of payment, that the bond was not negotiable, "and that it was a pregnant warning to the purchaser, to inquire whether they had been issued or not."

> The happening of the contingency on which the payment of the instrument is dependent, will not cure the defect.
>
> Hill vs. Halfourd, 2 B. & P., 413.
> Kingston vs. Long, 4 Dougl. 9.
> See 1 Parsons on notes and bills, 48.
> Story on promissory notes, sec. 22.

This contingency converts these bonds, though payable to bearer, into mere agreements, and puts the plaintiff to proof of consideration for the promise and performance of the condition. 1 Parsons on Notes and Bills, 48.

This devolved on the plaintiff the proof of the power of the town to issue the bonds, (Ch. 126, General Laws of 1869) the proposition and performance of its terms.

> The proposition in addition to the certificate required by the bond, required others, which are not those proved but different.

A joint certificate of the chief officer of the railroad company and of the board of supervisors of the town properly authenticated as required by the 3d article of the proposition. The certificate proven is a certificate of the railroad company, not of any officer. That stipulated for relied on the responsibility of the individual holding the chief office, not on the company the other party to the proposition, which responsibility is completely evaded.

An authenticated certificate of the board of supervisors is an official certificate made by the board convened at a meeting, subscribed by its chairman, with the seal of the town affixed and attested by the town clerk. That proven is simply the certificate of the chairman as his decla-

ration whereby the joint action of the supervisors is evaded. The certificate proven does not require the president of the bank to make a certificate as is required by said article of the proposition; that certificate was to be the official declaration of the president of the bank that all the conditions of the proposition have been performed.

There is nothing purporting to be such a certificate proven in the case, but the whole responsibility of making such an one which the proposition puts on the president of the bank is evaded by him.

This certificate and that stipulated for in the bond, "and this bond shall be valid only when it is thereon duly certified that it has been duly certified that the conditions upon which it was voted, issued and deposited by said town have been performed," are attempted to be sustained by the following:

"I hereby certify that I have received certificates of which the above are copies, which certificates are on file in this bank."

These certificates are not complete copies of the original certificates furnished by the railroad company to the bank the proposition annexed to the certificate being omitted.

From these certificates, the plaintiff below had notice of the proposition sufficient to put him on inquiry.

It is difficult to construe these certificates into a substantial compliance with the proposition and the bond, if it were admissable to do so, because they do not eminate from the arbiters the parties selected and do not fulfill the terms of the certificates stipulated for.

II.

The second question should have been answered in the affirmative. The Court should have instructed the jury that until the Wisconsin Central Railroad Company had acquired, by construction, or purchase a railroad of its own from Block 3, Jones' Plat, to the Wolf River, that the conditions upon which the bonds were voted, had not been performed.

There must be exact performance of the conditions. These conditions are conditions precedent and until complied with there could be no delivery of the stock or of the bonds; and the latter could only then be valid; the parties made these certificates the evidence of the fulfillment of the law and the proposition.

In United States vs. Robeson, 9 Peters 319, the charter party stipulated that freight should be paid on the production of a certificate of a certain officer. Other evidence was held inadmissable and the Court ruled, "Where the parties in their contract fix on a certain mode by which the amount to be paid shall be ascertained, as in the present case, the party that seeks an enforcement of an agreement, must show that he has done everything on his part which could be done to carry it into effect. He cannot compel the payment of the amount claimed, unless he shall procure the kind of evidence required by the contract." * * * *

This doctrine is held in,

Smith vs. Briggs, 3 Denio, 73.
Clark vs. Watson. 114 E. C. L. 278.
Smith vs. Brady, 17 N. Y., 175.
Del. & H. Canal vs. Penn. Coal Co., 50 N. Y., 258.
Hudson vs. McCartney, 33 Wis., 340.

The construction and interpretation of the law, the proposition, the bonds and certificates, was the duty of the Court and should not have been submitted to the jury, there being no dispute about them.

The *complete construction of a road* between Doty's Island and Wolf River is a condition precedent, (not merely the laying of iron and running of cars) to the validity of the bonds.

The Court below so says (Fol. 107) also that "it was necessary that the railroad being finished between the two points it should have a bridge." (Fol. 110.) The Court also says that "in running across said bridge and coming to said Block 3, the railroad runs on the line of the Chicago & Northwestern railroad for the space of a mile." This bridge and track are used under a mere license for this space.

Still it is of opinion this is an independent line, and that the town having obtained such a road has gained all that it was entitled to.

It might be true that the Wisconsin Central Railroad could, by purchase, have acquired an indefeasible right to use the bridge of the Northwestern Railroad, and then have become an independent line, though that is very doubtful, as the construction of a new line was evidently contemplated.

The Court below says the object of Menasha was to have a railroad from Menasha into the interior of the State and to Lake Superior. Can it be said to have such a railroad, when it enjoys only a mere license to run over another's railroad, which may be cut off upon notice at the caprice of another company? If so what is the condition

of Menasha? She would not have even a right of way to reach those points, much less a completed railroad. A bridge over a lake two-fifths of a mile wide, and the right of way for three-fifths of a mile, is not such a trifle that it could be supplied without considerable cost and interruption to the business of the city. This access to the interior over an independent line is the only advantage the town could gain over rival towns situate on the Chicago & Northwestern Railroad.

The road required is only about 20 miles long, and this bridge and right of way is by far the most costly portion of the road.

To the extent of the value of this bridge and right of way, with a completed road laid on it, the value of the stock to be given by the Railroad Company to the town is lessened. It is not secured as contemplated.

But if the Wisconsin Central had leased another road, instead of building one, why would it not have fulfilled the proposition as it is construed by the Court below?

The defendant was entitled to strict performance of the conditions precedent, and it was error in the Court to put the case to the jury, whether in their opinion there had been a substantial performance of the contract.

In an action upon a contract to deliver "an entire lot of broom brush, it is erroneous to instruct the jury, that if they believe, from the evidence, that the plaintiff has substantially performed the agreement, they will find for him."

Taylor vs. Beck, 13 Ill., 376.

"The corporation had a right to insist upon a full performance of the contract. It was entitled to ties of the kind described in the contract. The real inquiry was, did the ties in question answer the description, not whether they were equivolent in value, or as suitable for the purpose intended."

The Alton, &c. Railroad Co., vs. Northcott, 15 Ill., 50.
Baird vs. Evans, 20 Ill., 30.
Oakley vs. Morton, 11 N. Y., 34.
Chesberough vs. Wright, 51 N. Y., 662.

In equity strict performance is held necessary.

Pike vs. Butler, 4 Comstock, N. Y,, 360.
This Court in Swain vs. Seamans, 9 Wall. 254.

In a suit in equity to obtain the discharge of a mortgage and substitute other securities agreed on on the ground of compliance with an agreement to build a mill 50 feet wide and 150 feet long, held, that the building of a mill 75 feet wide and 100 feet long, proved to be worth double the mill agreed to be built and far better security, did not entitle the complainants to relief; that it was not performance.

In the case of The Harriman, 9 Wall., 161.

This Court rule in the case of a charter party that strict performance must be proven.

In Lawson vs. Schnellen et al., 33 Wis., 331.

The Supreme Court of Wisconsin so held in construeing this very proposition under which the bonds in question were issued.

III.

The third and fourth questions should have been answered in the negative.

The stock to be delivered by the railroad company, was the stock of the railroad making the proposition, or that of any company growing out of it under legislation *in force at the time of the vote*, June 4, 1870.

The issue of bonds could have been required by the company formed by the consolidation of the Portage, Stevens Point and Superior R. R. with the Portage, Winnebago and Superior R. R., under the ruling in the case of Town of Scotland vs. Thomas, 94 U. S. 682. But the issue of bonds under the consolidation between the Wisconsin Central Railroad Company and the Manitowoc and Minnesota Railroad Company, not being authorized by any legislation in force at date of vote, could not be enforced as it cannot be claimed there was an implied agreement to accept the stock after this consolidation.

This consolidation is with a road having the right to build from Lake Michigan to the Mississippi, having an eastern and a western terminus and passing over a route entirely foreign to the project voted for. Is the stock of this latter company, liable to the debts, and bound to this new distinct enterprise, the same as the stock in the original company, without this branch, which is about as long as the trunk line, and running at nearly right angles to it?

By consolidation, it was held in Harshman vs. Bates Co. 92 U. S. 569, that the original company was extinguished. In this case has not the stock been so modified by the addition of the new road, that it may be said to be the stock of another company? The town was, by the proposition, entitled to stock in a certain company;

by the act of the railroad company that company had ceased to exist when the stock was exchanged by the bank for the bonds.

After the act of consolidation the stock could have no distinct market value.

In Clearwater vs. Meredith, 1 Wall page 41, it was held that consolidation worked di-solution, that a non-consenting stockholder was discharged.

Neither the town nor the railroad company by the simple deposit of their respective securities with the bank acquired any interest in them,all was dependant on compliance by the company with the proposition. If at the time when the bank made the exchange, the company and its stock had by this consolidation become changed, was there in existence a company to which delivery could rightfully be made, or was the stock stipulated for in existence to exchange?

The company alone is responsible for this. It was its duty to keep itself competent to fulfill the proposition, to furnish to the town as one of its stockholders, a railroad as security for its stock, free from complications with another road.

IV.

The recital in the bonds of their issuance pursuant to a vote is no estoppel upon the defendants.

It is obvious that it was not the intention that negotiable bonds should be issued; also that it was not the intention that any declaration by the officers of the town alone should make them negotiable or estop the town. To accomplish that end the certificates of the chief officers of

the railroad company and of the bank, with the supervisors of the town were pre-requisites. From this it results that the implied power of the officers of the town in the matter of giving negotiability, or estopping the town, by any recital or declaration as officers of the town was excluded; that they had no general powers as officers, but acted under the limited agency created by the act and proposition.

The stipulation contained in the bond preceding this recital, that they are only to be valid on the endorsing of certain certificates thereon, subordinates this recital to it. If the recital is construed to override the stipulation, it practically eliminates the latter from the bond.

The whole and sole effect of the recital is simply that the bonds were voted; that the election was legally held. It can extend no farther.

The principle of estoppel is that the party believes it and acts on it. If he knows to the contrary, he cannot be influenced by it. These bonds not being negotiable, the plaintiff does not stand in the position of the plaintiffs in the cases where such an estoppel has been held good.

He stands chargeable with notice of the law, the terms of the proposition, and the vote, and knows the full extent of the powers of the officers of the town.

V.

The receipt of the stock by the chairman of the town and the attempt to levy a tax are no estoppel.

There was no laches on the part of the town. The first attempt on the part of the officers to levy a tax was arrested by an injunction. There is no evidence that the

stock ever came into the hands of the fiscal officer of the town, the treasurer.

An injunction bill had been filed by a tax-payer of the town on behalf of himself and others prior to the making of these bonds, and had prevented the issue of bonds under the vote; the case was carried to the Supreme Court and on demurrer the injunction sustained. Pending the litigation on the 25th of October, 1871, the bonds in suit were executed and delivered to the bank by the chairman and clerk. In November, 1872, an attempt was made to levy a tax, which was enjoined in said suit on the 18th of February, 1873, and the injunction is still in force.

The plaintiff bought part of his bonds in December, 1873 and part in September, 1874, from the Railroad Company.

These bonds not being negotiable, the plaintiff took them with notice of the pendency of such proceedings to enjoin the levy of the tax to pay the interest on them taken in the suit of Lawson; and of the decision of the Supreme Court of Wisconsin, made at the June Term, 1873, of the tenor of which the Court below in its charge (Fol. 107 to 110), has given the outline, from which it will appear that the Railroad Company had not built the bridge across Lake Butte des Morts, but had adopted the bridge and right of way of the Chicago & Northwestern Railroad.

How in the face of such proceedings can plaintiff say the town accepted the stock or acquiesced in the delivery of the bonds?

If the proposition was not fulfilled, had any parties but the electors of the town power to accept other than complete

fulfillment? The officers certainly could not change or modify the contract. How then could they ratify any change or substituted performance?

But this question of estoppel could not have been passed on by the jury, as it was rendered immaterial by the charge that there had been a substantial performance.

E. MARINER,

Att'y for Plaintiffs in Error.

fulfillment? The officers certainly could not change or modify the contract. How then could they ratify any change or substituted performance?

But this question of estoppel could not have been passed on by the jury, as it was rendered immaterial by the charge that there had been a substantial performance.

E. MARINER,

Att'y for Plaintiffs in Error.

FILED
APR 19 1880

Supreme Court of the United States.

OCTOBER TERM, 1879.

No. ~~270~~ 284.

THE TOWN OF MENASHA AND CITY OF MENASHA,
Plaintiffs in Error,

vs.

ROWLAND G. HAZARD, Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

BRIEF OF EDWIN H. ABBOT, FOR THE DEFENDANT IN ERROR.

Cramer, Aikens & Cramer, Printers, Milwaukee, Wis.

Supreme Court of the United States.

OCTOBER TERM, 1879. No. 346.

THE TOWN OF MENASHA AND CITY OF MENASHA, PLAINTIFFS IN ERROR,

vs.

ROWLAND G. HAZARD, DEFENDANT IN ERROR.

In Error to the Circuit Court of the United States for the Eastern District of Wisconsin.

BRIEF OF EDWIN H. ABBOT, FOR THE DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

This is an action on coupons from bonds, issued by the Town of Menasha, in Wisconsin, in aid of the construction of the Wisconsin Central Railroad, under a proposition authorized by law and duly adopted by a majority of the legal voters of the town at an election held after due notice, on June 4, 1870.

The defendant in error is a *bona-fide* holder, for value, of the coupons and bonds in suit. He bought them "without notice other than appears on the face of the bonds and certificates printed on them."

Transcript of Record, fol. 105, p. 64.

The jury, after a long trial, found all the issues of fact for the plaintiff (fol. 82, p. 55); and, among them, that there had been, under all the facts, "a substantial compliance with the terms of the proposition in the terms of the bond;" and also that there had been "a substantial compliance on the part of the railroad company" in all the conditions of its construction of the railroad according to the terms of that proposition (fol. 106, p. 64). Every equitable consideration bound the town to pay these bonds, in the opinion of the jury; and this verdict was not reached, as the record shows, until all the facts had been proved before the jury *as if the case were being tried between the town and the railroad company*, not between the town and a holder of its obligations for value, in good faith, and without notice.

The bonds recite, either in express terms or by reference to statutes, or show on their face:—(p. 59).

1. That the legislature conferred power upon the Town of Menasha to issue these bonds to the Portage, Winnebago and Superior Railroad Company by c. 126 of the Laws of 1869, approved March 9, 1869, which took effect by publication March 12, 1869.

2. That the plaintiff's bonds were issued under that power "in pursuance of a vote of the legal voters of said town on the 4th day of June, 1870."

3. That they were made in the name of the Wisconsin Central Railroad Company because it was the Portage, Winnebago and Superior Railroad Company under a new name, and was, by the act which changed its name, expressly authorized to "execute, and have executed with it,

any contracts made under its said name of Portage, Winnebago and Superior Railroad Company, with any person or persons, parties or municipal corporations for the delivery of stock, bonds or other securities, the same and with like force and effect as though its name had not been changed." P. & L. Acts of 1871, c. 27, approved and published February 4, 1871.

4. That the Legislature had also enacted, by general law, Acts of 1871, c. 31, § 2, approved March 1, and published March 4, 1871, the following:

"All bonds or other securities which have heretofore been voted by any county, town, incorporated city, or village, under the provisions of said chapter 126 of the general laws of 1869, to said railroad company under its name of Portage, Winnebago and Superior Railroad Company, shall be issued and delivered to said company by and under its said name of Wisconsin Central Railroad Company, and such bonds or other securities so issued and delivered shall have in all courts and places, and with all parties, the same force and effect as though the name of said company had not been changed, and the same had been issued and delivered to it under its name of Portage, Winnebago and Superior Railroad Company."

5. That the bonds were executed on June 1, 1871, under the town seal, by the chairman of the Board of Supervisors and the Town Clerk of the town, who were, by the statute recited (§ 5, c. 126 of 1869), declared to be "the proper town officers" to carry its provisions into effect.

6. That "this bond shall be valid only when it is thereon duly certified that it has been duly certified that the conditions upon which it was voted, issued and deposited by said town have been performed."

7. That to the payment of these bonds "the faith and revenues of said town are hereby irrevocably pledged."

8. That a tax shall be annually levied on the property in said town to pay the interest regularly and raise a sinking fund to pay the principal when it becomes due.

The only questions open in this writ of error are, stated briefly:—

Record, folios 105, 106, p. 64, and folios 112, 113, pp. 66, 67.

First:—Whether, *in law*, the certificates upon the bonds are sufficient to sustain this judgment against this town of Menasha.

Second:—Whether, *in law*, the adoption of the Northwestern bridge over Lake Butte des Morts as a part of its line, was a performance of the company's engagement to construct a railroad from block 3, in Jones' Plat, on Doty's Island, to Wolf River.

Third:—Whether the stock of the Wisconsin Central Railroad Company (after the Portage, Stevens Point and Superior and the Manitowoc and Minnesota franchises had by consolidation, been merged in the Wisconsin Central franchise), was a suffiicent delivery under the railroad proposition.

Fourth:—Whether Menasha was authorized to issue its bonds to the Wisconsin Central Railroad Company after this merger of these other franchises in its own franchise.

FIRST POINT.

The words of the certificates on the back of the bonds satisfy the terms of the condition on their face; and the jury found that the whole proposition had been in fact fulfilled by the company in good faith.

The condition in the bond reads: "This bond shall be valid only when it is thereon duly certified that it has been duly certified that the conditions upon which it was voted, issued and deposited by said town, have been duly performed." (folio 76, p. 52.)

The proposition reads, as the defendants themselves show in their answer, "said bonds shall be valid only when it is thereon duly certified that the conditions upon which they were voted, issued and deposited by said town, have been performed," (folio 72, p. 51), and instructs the trustee bank "to hold the same on deposit in trust for said town, until such time as there shall be filed in said bank a properly authenticated certificate, signed by the chief officer of this company and the *chairman of the* board of supervisors of said town, or the secretary of state of this state, that the iron has been laid upon the track of road and cars have been run over the same through from the depot on Doty's Island, or in said town, to the Wolf River." (folio 73, p. 51.)

The certificate of the chief officer (the president) of the company and the chairman of the board of supervisors made, on oath, under seal of company, before Notaries and under notarial seals, reads:—"that the iron has been laid on the track of road of said company from block No. 3 in Jones' Plat, in the town of Neenah, Doty's Island, to Wolf River, and that the cars have been run over the same daily for more than two weeks past, from the depot on

Doty's Island to said Wolf River;" and further certifies to the trustee, on October 25, 1871, on behalf of both county and company "that therefore, according to the terms of the proposition (a copy of which is hereto annexed) the said company are entitled to the transfer of the bonds of said town deposited with you." (folio 97, p. 61.)

This original certificate, addressed to the trustee bank, was, by the proposition (folio 88), required to be "filed in said bank." Its president certifies on each bond that he has "received certificates of which the above are copies, *which certificates are on file in this bank.*" (folio 98, p. 62).

The notice *which the town clerk published*, inadvertently omitted the words above italicized, viz: "the chairman of," and thus called for a "certificated" signed by "the chief officers of this company and the board of supervisors of said town." (folio 90, p. 58).

These are manifestly printer's mistakes, in obeying a provision which concerned merely the form of proof of certain facts, and was not essential in any respect to the real question to be voted on. The proposition itself, on the county files and on the trustees' files, was followed in wording the certificates, both because it was, in fact, the most accurate expression of the real contract, and also because, by the statute, the company was required to "*make and deliver to the town clerk . . . a definite proposition in writing,*" and THIS PROPOSITION ON THE TOWN CLERK'S FILES (*not* the one which the town clerk inaccurately printed) was the proposition voted on and accepted by the county, and the basis of the bonds.

Acts of 1869, c. 126, §§2, 3.

If this clerical discrepancy were in an essential provision, the facts show that the certificates were technically

correct. But it seems so plain that the discrepancy is immaterial, that it would have been passed without notice had not the question been permitted to be raised here *in the form*, it is true, of a certificate of division of opinion, but, in fact, merely because the judgment is too small to bring it before this court in any other shape.

Moreover, why should the "board of supervisors" be expected to certify in any other than the usual mode, *i. e.*, by the hand of their chairman? It acts, in this authentication of fact, merely as a committee; and follows common usage in signing its report by the hand of its chairman. The statute required no certificate at all.

To allow the town of Menasha to profit by the negligence of its town clerk in correcting "proof" of the notice *which he, not the railroad company*, was required to publish, would be most unjust. It would accept a mere immaterial mistake, which the astuteness of counsel first brought to light years after the event, as a sufficient excuse for the town's repudiating obligations which the holder bought for full value in open market, and for which, as the record shows, the town got full value before they were issued.

SECOND POINT.

The use of the Northwestern bridge as a part of the proposed railroad was found by the jury to be a substantial compliance with the company's proposition. The whole question was one of fact and properly left to the jury.

The court left the jury to decide whether the railroad was built as agreed in the proposition. The verdict settled the question of fact; and there was no question of law involved, as clearly appears from the charge of Judge Drummond on this subject, which is given at large in the record, pp. 64, 65, 66.

THIRD POINT.

The stock delivered was stock in the identical company named in the proposition. Its name was changed to Wisconsin Central Railroad Company, and its franchises were enlarged by the, so called, consolidations, but they were, in fact, mere mergers of other charters granted originally in other names to build the same line of railroad. They worked no change in the stock; and were, in effect, no more than a gift of new corporate powers to the original company which, under the title of the Portage, Winnebago and Superior Railroad Company, submitted the proposition.

1. The alleged "consolidation" of the Portage, Winnebago and Superior Railroad Company with the Wisconsin Central Railroad Company never took place. The third question, in the certificate of division (folio 112, p. 66) which contains the only reference in the record to this "consolidation," is corrected by the *thirteenth* fact found by the court, (folio 103, p. 63), which truly states that, by c. 27 of P. and L. Laws of 1871, "*the name* of the Portage, Winnebago and Superior Railroad Company *was changed* to the Wisconsin Central Railroad Company." This change of name was the sole effect of the act.

A change of corporate name in accordance with a legislative act does not render invalid a valid subscription to the capital stock of an incorporated railroad company, and the company sue for and recover the subscription in its new name.

Bangor and Bucksport R. R. Co. *v.* Buck, 68 Me., 81, 84.

2. These bonds were delivered and put upon the market by the town with full knowledge on its part of all the defences now urged; and it is too late now to raise them against a *bona-fide* purchaser for value without notice.

Brooklyn *v.* Insurance Co., 99 U. S. 362.

3. The power of the Portage, Stevens Point and Superior Railroad Company to consolidate with the Portage, Winnebago and Superior Railroad Company, was conferred upon it by §22 of c. 369 of P. & L. Laws of 1870, approved March 16, 1870. General authority was conferred on the Portage, Winnebago and Superior Railroad Company to consolidate with any other company of a certain specified description, by c. 246 of P. & L. Laws of 1870, approved March 10, 1870, and published April 6, 1870. This description covered both the Stevens Point Company and the Manitowoc and Minnesota Company. When these consolidations actually took place, there was full power in Menasha to subscribe to the stock of the consolidated company (if it had been different; but it was not), as well as to the stock of the original company; and there was full authority in each company to receive that subscription. Therefore these consolidations did not impair the validity of the subscription by Menasha under its vote of June 4, 1870.

Philadelphia & Wilmington Railroad Co. *v.* Maryland, 10 How. 376.
Tomlinson *v.* Branch, 15 Wall. 469.
Branch *v.* Charleston, 92 U. S. 677.
County of Scotland *v.* Thomas, 94 U. S. 682.
Wilson *v.* Salamanca, 99 U. S. 499.
Township of Empire *v.* Darlington, No. 1097, Octo. Term, 1879.

In Wilson *v.* Salamanca (p. 504), the court says: "The power of the State Line, Oswego and Southern Kansas Railroad Company to consolidate with other companies existed when the vote for subscription was taken in the township. When the consolidation took place there was a perfected power in the township to subscribe to the stock of that company, and there was also an existing privilege

in the company to receive the subscription. That privilege, as we held in the Scotland County case, passed by the consolidation to the consolidated company."

In County of Scotland *v.* Thomas (p. 693), the court says: "If we look at the subject in a broad and general view, it will be still more manifest that the power in question was intended to exist, notwithstanding the consolidation. The project of the railroad promised a great public improvement, conducive to the interests of Alexandria and the counties through which it would pass. Its construction, however, would greatly depend upon the local aid and encouragement it might receive. The interests of its projectors and the country it was to traverse were regarded as mutual. The power of the adjacent counties and towns to subscribe to its stock, as a means of securing its construction, was desired not only by the company, but by the inhabitants. Whether the policy was a wise one or not, is not now the question. It was in accordance with the public sentiment of that period. The power was sought at the hands of the legislature, and was given. It was relied on by those who subscribed their private funds to the enterprise. It was involved in the general scheme as an integral part of it, and as much contributory and necessary to its success as the prospective right to take tolls. Why it should not still attach to this portion of the road, as one of the rights and privileges belonging to it, into whose hands soever it comes, by consolidation or otherwise, it is difficult to see. . . Subscription to the stock was not only a power of the county but a privilege of the company, being a portion of the rights and privileges which it obtained by translation. . . The power of the counties to subscribe being thus held to be a

right and privilege of the company, in our opinion, passed with its other rights and privileges into the new conditions of existence which the company assumed under the consolidation."

4. This language was used in reference to a true consolidation where corporate bodies, really different in purpose and objects and routes and stocks, were united into one large enterprise which included them all. But the facts in our case, as the charters and record show, do not disclose anything except the union of certain franchises, all designed originally to effect the construction of one railroad, and then united in order to accomplish what was, in fact, the common original design.

First:—What was the effect of the consolidation of the Portage, Stevens Point and Superior Company with the Portage, Winnebago and Superior Company? Did it work a dissolution of both, and the creation of a new corporation under the name of the latter? Or was it merely an enlargment, without substantial change, of franchises already possessed?

In Central Railroad Company *v.* Georgia, 92 U. S., 665, 670, this court says: "Whether such be the effect or not, must depend upon the statute under which the consolidation takes place, and of the intention therein manifested. If, in the statute, there be no words of grant of corporate powers, it is difficult to see how a new corporation is created. If it is, it must be by implication; and it is an unbending rule that a grant of corporate existence is never implied."

Looking at the charter of the Portage, Stevens Point and Superior Railroad Company, (P. and L. Laws of Wis-

consin for 1870, c. 369), it appears that the railroad authorized by it is "FROM PORTAGE CITY in Columbia County TO "STEVENS POINT in Portage County, to connect with the "Portage, Winnebago and Superior railroad at such point "as may be agreed upon between the companies owning "said roads," and that it may be built *"over such route as they may select."* (§ 2.)

Looking at the charter of the Portage and Superior Railroad Company, (P. & L. Laws of Wisconsin for 1866, c. 362, § 3)—one of the charters passing to the Portage, Winnebago and Superior Railroad Company by act of the Legislature on April 29, 1869 (P. & L. Laws of Wisconsin for 1869, c. 257) *prior to the voting of these bonds*,—we find that when the town of Menasha voted these bonds, on June 4, 1870, the Portage, Winnebago and Superior Railroad Company was already authorized to build its railroad, between the same termini, *upon a specified route*, viz.: "FROM THE CITY OF PORTAGE, by the way of Ripon, in the county of Fond du Lac, and the city of Berlin, in the county of Green Lake, TO STEVENS POINT, and thence," etc.

A comparison of the charters, therefore, shows that the consolidation of the Portage, Stevens Point and Superior Company with the Portage, Winnebago and Superior Company *merely enlarged the powers of the latter corporation over its own location;* and nothing more.

"But," says Mr. Justice Strong, speaking the opinion of this court, "the gift of new powers to a corporation has never been thought to destroy its identity, much less to change it into a new being. Such a gift is not a grant of corporate existence. It assumes corporate life already existing."

Central Railroad Co. *v.* Georgia, 92 U. S. 665, 673.

It is apparent that the Legislature expressly contemplated this consolidation on the part of those two corporations when the Portage, Stevens Point and Superior charter was given, for it then conferred "the special right to join or consolidate the Portage, Winnebago and Superior Railroad Company at or near Stevens Point;" (§ 22 of c. 369 of P. & L. Laws of 1870,) and showed such special intention as to these two companies that the consolidation may reasonably be regarded in law, as it was actually in fact, as a mere extension of the discretionary power of the Portage, Winnebago and Superior Railroad Company to locate its route between Portage City and Stevens Point on such a line as should best serve the public and its own stockholders. There is not the slightest indication of an intent, by this consolidation, to wipe out the company to which these bonds were voted, and substitute therefor another company *of identical name* in its place. The articles of consolidation do not even suggest any name for the consolidated company, but show simply a surrender and merger of the Stevens Point Company into the other, in fulfillment of a legislative intent to thus enlarge the already possessed corporate powers of the Portage, Winnebago and Superior Railroad Company in the matter of locating its railroad.

Second:—The consolidation of the Manitowoc and Minnesota Railroad Company with, or rather its adoption into, the Wisconsin Central Railroad Company, took place on July 1, 1871, *after the date from which the Menasha bonds in this case speak, i. e.*, June 1, 1871. This plaintiff, who is a *bona-fide* holder for value without notice of anything not on the bond, is unaffected by what they do not recite or show; and they disclose nothing about any consolidations whatever.

If, however, we go behind this date and examine into the true character of this "consolidation," then it appears that the Wisconsin and Minnesota Railroad Company was authorized to build over part of the same route which the Winnebago and Superior Railroad Company occupied between Menasha and Stevens Point.

P. & L. Laws of 1866, c. 314, §2.
P. & L. Laws of 1868, c. 342, §2.

The articles of consolidation absorbed the Manitowoc and Minnesota Company into the Wisconsin Central Railroad Company, (for the name of the Portage, Winnebago and Superior Railroad Company had been changed on February 4, 1871) without change of name or seal on the part of the latter company. The stock was not changed in any way, either in form or amount; and the "consolidation" was of exactly the same character as the previous merger of the Stevens Point franchises, and amounted, like that, simply to an increase of corporate powers, without any loss of original existence or identity, on the part of the Wisconsin Central Railroad Company.

5. The rule in Harshman *v.* Bates County, 92 U. S., 569, has no more application to the present case than to Wilson *v.* Salamanca, where the court says:

"The township trustee and the township clerk who made the subscription and issued the bonds in this case were the officially constituted authorities of the township, and when they subscribed to the stock and issued the bonds, they acted in their official capacity as the legal representatives of the township, and not as mere agents. In this particular they occupied the position of the county court in the Scotland county case. They were to all intents and purposes the township in its corporate capacity. In *Harshman* v. *Bates County*, the case was different. The county court was the mere agent of a corporation with

which it had no official connection. The difference between the two cases is precisely that between a principal and an agent, and it is so expressly said in the Scotland county case. In the one case the corporation is bound if the action of the officers is within their corporate powers, while in the other the action must be within the corporate powers delegated to the agent." (p. 504.)

The Menasha bonds are signed by "the chairman of the board of supervisors and the town clerk," who are, by § 5 of ch. 126 of Laws of 1869, (the act recited in the bond), expressly declared to be "for the purpose of giving effect to the provisions of this act, the proper officers." The contract was made between the railroad company and the town, when the railroad proposition was accepted, (as the bond recites,) by "vote of the legal voters of said town on the 4th day of June, 1870, under and by virtue of the" act above recited. The chairman and the clerk, in their subsequent subscription and issue of these bonds, "were," to borrow the words of Chief Justice Waite above quoted, "to all intents and purposes the township in its corporate capacity."

FOURTH POINT.

The last two questions raised in the record are not open in this case. The plaintiff is protected by the recitals in the bond from the necessity of considering them, because he bought in good faith, and for value, without notice beyond the bond.

The statement of facts renders it unnecessary to argue this point.

"A corporation, quite as much as an individual, is held to a careful adherence to truth in their dealings with mankind; and cannot, by their representations *or silence*, in-

volve others in onerous engagements, and then defeat the calculations and claims their own conduct had superinduced."

Zabrizhe *v.* Cleveland, Columbus and Cincinnati R. R. Co., 23 How. 381.

Bissell *v.* City of Jeffersonville, 24 How. 287.

Hackett *v.* Ottawa, 99 U. S. 86, 96.

EDWIN H. ABBOT,
Attorney for Defendant in Error.

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Supreme Court of the United States.

OCTOBER TERM, 1879.

No. 284.

THE TOWN OF MENASHA AND CITY OF MENASHA,
Plaintiffs in Error,

vs.

ROWLAND G. HAZARD, Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

REPLY OF EDWIN H. ABBOT, TO THE BRIEF OF E. MARINER, ESQ., ATTORNEY FOR PLAINTIFF IN ERROR.

Cramer, Aikens & Cramer, Printers, Milwaukee, Wis.

Supreme Court of the United States.

OCTOBER TERM, 1879. No. 284.

THE TOWN OF MENASHA AND CITY OF MENASHA, PLAINTIFFS IN ERROR,

vs.

ROWLAND G. HAZARD, DEFENDANT IN ERROR.

In Error to the Circuit Court of the United States for the Eastern District of Wisconsin.

REPLY OF EDWIN H. ABBOT TO THE BRIEF OF E. MARINER, ESQ., ATTORNEY FOR PLAINTIFF IN ERROR.

The brief of the defendant in error was printed before the plaintiffs' brief was received; and, in reply, we submit the following suggestions:

FIRST—The learned counsel contends that the bonds in suit do not "import a liability on their face"; and that the bond is not negotiable because, "the bonds providing in terms that they shall be valid only when a certain certificate is made, the promise of payment is contingent." (Plaintiffs brief, p. 19.)

But this statement omits the fact that the certificate is required and is actually made *on the bond itself*. It might as well be said that an ordinary note, payable to A. B. or order, was not negotiable, because the note was not valid

until the indorsement to somebody's order, *i. e.*, a certificate rendering certain the person to whom it was payable, was placed upon it when it was signed by the promisor.

How does a condition in the bond that certain events must be certified, on the bond itself, to have occurred after signature and before the bond goes on the market, impair the complete certainty of the fact of payment? A bond, containing a condition *which is certified on the same paper to have been performed*, is not thereby made uncertain in any respect. It tells the whole story in itself. It is just as much a "courier without luggage," to borrow the words of Chief Justice Gibson, as if no such certificate had been required, because the instrument contains, *in and upon itself*, the question and its answer. Such certificates are exceedingly common on bonds which are to be deposited in escrow; and no information *aliunde* is wanting to fix the terms of the contract. The question which arises is not as to the negotiability of the bond, but whether the certificates on the back of the bond satisfy the requisition on the face.

Now, the requisition on the face of this bond is so indefinite that almost any certificate would satisfy it. That requisition was framed and inserted in the bonds by the plaintiffs in error; and it is not for them to set up this indefiniteness to defeat the claim of this *bona fide* holder, for value, of their obligation which contains it. They have no right to say to this defendant, "Our contract with the Company allowed us to insist on a more definite certificate; and, therefore, *though we voluntarily worded the bond so as call for an indefinite certificate only*, the proposition shows that we need not have done so; and therefore you must suffer." If there be any loss, arising from their indefiniteness of expression, it must fall on the town, which caused the indefiniteness, not on the innocent holder of the instrument. This is familiar law.

Whatever certificate the town might have required, they declared in the bond exactly what they did require; and, if the certificate on the back satisfies that actual requirement, the defendant, even if affected with knowledge of the contents of the proposition and of their larger right, need not regard it.

But, if he does regard the proposition, what then? The proposition says the bonds are valid, "when it is thereon duly certified," etc. But by whom? In what form? *The proposition is silent.* It only says "there shall be filed in said bank a properly authenticated certificate," etc., "*which certificate* shall authorize and require the president of said bank to certify," etc. But the trustee says: "My duty, is performed if I 'certify' on the bonds a copy of the certificates which I receive, and then preserve the originals on file in the bank. It is 'duly certified' on the bonds, when I certify to the copy of the joint certificate made by the president of the railroad and the chairman of the town, who know personally the facts. The certificate states all the facts. I am not asked to certify to any facts on my personal knowledge, but to do so on their certificates. If, then, I put the whole of their certificates on the bonds, I do all which the proposition requires. Those certificates contain all my knowledge; and the proposition does not contemplate my having any other knowledge."

The question then re-occurs: Do the certificates thus spread on the bond satisfy the provision *of the bond* for its certification?

A fair comparison of the certificates certainly shows that they do.

The president of the company and the chairman of the board specifically certify the performance of each particular act which the proposition called for; and then, in general language, unite in certifying to the trustee that, according to the terms of the contract, "*the said company are entitled to the transfer of the bonds of said town deposited with you.*"

Do not these words necessarily imply that "the conditions upon which it [the bond] was voted, issued and deposited by said town have been performed?" Are they susceptible of any fair interpretation which does not include this implication? And did not these words, in the broadest manner possible, assure this buyer, in open market, that every requirement both of law and of fact which the parties had stipulated should be essential to the validity of these bonds, had been fulfilled? And was he not justified in assuming that this assertion, jointly made by the specially designated representatives of both parties to the contract, was literally true?

It is not the fact that this certificate was made by the company only, and not by its president personally. The notary certifies on the bond that "Gardner Colby who is "personally known to me, and known to me to be the presi-"dent of said railroad company, made oath that the above-"written certificate by him signed is true." To contend that, because he also added the corporate name and seal to his own signature, therefore the verification by him personally did not make it also his personal certificate, is hypercritical, and an argument unworthy of this forum. (Record, folio 98, p. 61.)

That the proposition, which contained the contract between the town and the company, and designated the proper persons to make the certification on the bonds, was *the proposition on file in the town clerk's office*, (not the misprinted version which the town clerk published,) has already been sufficiently argued. It is shown in my brief that there is no ground for the objection that all the members of the town board did not join in furnishing "an official certificate made by the board convened at a meeting, subscribed by its chairman, with the seal of the town affixed, and attested by the town clerk." (Plaintiffs' Brief, p. 20.)

No such certificate was called for by the real contract: and, it is confidently urged, none such is requisite under

the erroneously printed notice itself. The facts to be certified were publicly notorious, and were not of such character as to need twenty-four signatures by a town board to establish them. The signature of the chairman of the committee was ample fulfilment of the letter, even, of the published notice.

We submit, therefore that, the bonds were negotiable; and that the defendant might have safely rested his case upon proof of his being a *bona fide* purchaser for value without notice of anything not appearing on the instrument itself.

But he was not afraid of any issue which could be raised, and met the entire case just as if the railroad company were itself suing on the bonds.

SECOND—Assuming, however, *pro hac vice*, that the question of performance of the proposition was open, the second question as to the Northwestern bridge involves a simple issue of fact, and was properly left to the jury.

It is unnecessary to notice the numerous mis-allegations of fact in the pleadings of the town and city. They are elaborately repeated in the statement of the case, which the learned counsel makes in his brief. But the proofs did not sustain them; the jury did not believe them, and they are of no consequence in this argument.

The proposition accepted by the town, embodied the terms of an ordinary contract; and whether or not it had been in all its provisions substantially performed, was a question of fact.

The injunction in Lawson *vs.* Schnellen has no bearing on this suit or the matters here in issue, and may be left out of the case. The injunction involved a different set of bonds which were all burned. The court below finds these facts specially. (Record, folio 91, p. 59.) Moreover, as the bonds are negotiable and the defendant is a *bona fide* holder for value, he is not affected with notice of the injunction, even if it had applied to the bonds in suit.

County of Warren vs. Marcy, 97 U. S. 107,
County of Cass vs. Gillett, October Term 1879, No. 68.
National Bank of Washington vs. Texas, 20 Wall, 88.

It is not correct to say that the parties made the certificates on the bonds "the evidence of the fulfilment of the law and the proposition." A buyer of the bonds had the right to rely on them without looking further; but there is not the slightest ground for contending that, if he is forced to go behind them, he cannot prove actual compliance by the company with its contract by any kind of evidence or manner of proof applicable to such an issue. The case of United States *vs.* Robeson is not in point. The contract does not limit either party to a particular mode of proving its performance; nor require any particular kind of evidence to establish that fact. It therefore leaves all modes of legitimate proof open.

It will be found, moreover, that the proposition does not require *the complete construction of an independent road* between Jones' Plat and Wolf River. This is an assumption, by implication, which the whole proposition does not bear out; though it is frequently made and reiterated throughout the plaintiff's brief. His Honor, Judge Drummond, submitted to the jury the issue of substantial compliance by the company with its contract, because one chief issue was whether the parties meant that a second bridge should be built where one was amply sufficient. The proposition is silent on the point. There is no question of "condition precedent" in regard to it. It will be noticed that the twenty-year contract for the use of the bridge could not be terminated by either party to without *one year's notice*, a period amply sufficient for building a new bridge before the use of the present one could be stopped.

It is not true in fact, and does not appear in the record, that "the road required is only about 20 miles long, and this bridge and right of way is by far the most costly part of the road." The proposition describes the road and its

location to Lake Superior. The stock given covered this whole route, and the record and charters show there was only one stock in one company. If the counsel had stated that the railroad was about 327 miles long; and that the construction of a bridge across Lake Butte des Morts, (which is quite shallow), is not especially difficult or expensive; and that the present bridge is used, in common, by both companies, to suit both public and private convenience; and that the non-existence of an "independent" bridge, is important only in the argument of the learned counsel for Menasha, he would have stated the exact truth.

In Lawson *vs.* Schnellen, as His Honor Judge Drummond stated to the jury, the facts were not in evidence before the Supreme Court of Wisconsin when they gave their opinion; but the case was heard, on demurrer, upon grounds which made the allegations of fact as to this bridge immaterial for the purposes of the case then argued. They were, however, in proof before this jury; and the verdict shows how unsubstantial the real objection is.

THIRD—The plaintiff's counsel now admits in his brief that the consolidation of the Portage, Stevens Point and Superior Railroad with the Portage, Winnebago and Superior Railroad does not, unless this Court overrules the law declared in County of Scotland *v.* Thomas, invalidate the bonds. But, as to the Manitowoc and Minnesota consolidation, he assumes that it was not "authorized by any "legislation in force at date of vote," and "therefore that "it cannot be claimed there was an implied agreement to "accept the stock after this consolidation."

This assumption, also, is not founded in fact.

By § 1 of c. 79 of Revised Statutes then in force, [1858], "all railroad companies now organized, or hereafter to be "organized, which now have or hereafter may have their "termini fixed by law, whenever their said road or roads "intersect by continuous lines, be and the same are here- "by authorized and empowered to consolidate their prop-

"erty and stock with each other." Other sections of this chapter define how this consolidation may be performed, and its effect, and the like. This consolidation of which the town complains, was made according to the provisions of this chapter.

The Manitowoc and Minnesota Railroad route, as defined by its charter, "intersected," unavoidably, the Portage, Winnebago and Superior line, as well as overlapped it.

Although this section was repealed by § 1 of c. 49 of the Laws of 1864, it was re-enacted as to the Manitowoc and Minnesota Railroad; and, if it is important to show that the Manitowoc and Minnesota Company had special authority to do what it did, it will be seen that it received that authority before the consolidation was made.

By § 1 of c. 476 of P. & L. Laws of 1871, approved March 24, 1871, and published April 5, 1871, the Manitowoc and Minnesota Railroad Company was authorized "to use and exercise all or any of the powers, franchises "and immunities mentioned in and conferred upon railroad "companies by chapter 79 of the Revised Statutes entitled "of railroads."

But, for the purposes of this case, it is enough if the company which submitted the proposition, possessed on June 4, 1870, when Menasha voted these bonds, in any of its charters special authority to make this consolidation. The Portage and Superior Railroad charter (§ 29 of c. 362 of P. and L. Laws of 1866), and the Winnebago and Lake Superior Railroad charter (§ 28 of c. 314 of P. and L. Laws of 1866), contain this provision: "In case any other railroad company now organized under the provisions of any law of this State, shall have surveyed and definitely located or in part constructed a line of railroad along or upon or nearly along or upon the proposed line of railroad hereby authorized, the said company shall have power to make such arrangements for the purchase of or

consolidation or connection with such other line of railroad or such railroad company as may be agreed upon by and between the said railroad companies."

But, if this be not enough, the Portage, Winnebago and Superior Railroad Company, by § 2 of c. 246 of P. and L. Laws of 1870, approved March 10, 1870, and published April 6, 1870, was granted even a broader power, viz: "In case any other railroad shall have partially surveyed or located or constructed or in part constructed, a line of railroad along or upon or nearly along or upon any portion of the proposed or located lines of road of said railroad company, the said company shall have power to make such arrangements for the purchase of or connection or consolidation with such other line of railroad, or such railroad company, as may be agreed upon by and between the said railroad companies; and the said company shall have power to consolidate with other railroad companies which by law may be authorized to construct connecting lines of road and make such consolidation."

The Manitowoc and Minnesota Railway Company was authorized to build from Manitowoc *via Menasha* to St. Paul: and its route, for nearly two-thirds of distance, was, unvoidably, as well as actually, along the line of the Portage, Winnebago and Superior Railroad, as it was located and described in the proposition. The learned counsel therefore is utterly wrong in supposing there was not "any legislation in force at date of the vote" [June 4, 1870,] which authorized this consolidation. A very cursory examination of the statutes of Wisconsin pertinent to this case, would have kept him from so capital an error. This consolidation comes within the rule in County of Scotland *vs.* Thomas, on the counsel's own theory; even if the other facts in regard to it, which are discussed in my brief, were wanting.

The present issue is entirely within the adjudicated cases.

"The fact that before bonds were issued, but not before the subscription was made, the parent company sold and assigned a portion of its right, and all franchises connected therewith, to the Missouri, Kansas and Texas Railroad Company, does not alter the case. So far as appears, the Tebo and Neosho Company did not cease to exist..... But had the company ceased to exist, it would make no difference. Its franchises were not extinguished, but only transferred and the subscription had been ordered before the sale took place."

County of Henry vs. Nicolay, 95 U. S. 619.

County of Cass vs. Gillett, October Term, 1879, No. 68.

This court has used the following language in regard to the case of the County of Scotland *vs.* Thomas: "It is also established by the same authority that the consolidation of one railroad company with another company does not extinguish the power of a county to subscribe, or the privilege of the company to receive subscriptions; and this, although the consolidation be made by authority given after the constitution took effect, and although the subscription be made to the stock of such newly organized company, and the bonds be issued after the same period. These are held to be features constituting alterations merely of the charter, and not affecting the rights or powers of the companies to receive subscriptions or of counties to issue their bonds."

County of Schuyler vs. Thomas, 98 U. S. 174.

County of Callaway vs. Foster, 93 U. S. 567, 174.

County of Ray vs. Vansycle, 96 U. S. 675.

"The statutes we have referred to indicate," says this court in a similar case, "that the legislature supposed that such consolidations and arguments as were here made might be necessary.....All this was provided for in the charter of the original company, to which the town subscription was made; and the subscription was made with

the knowledge of the town that new organizations might be made, and that the subscription was liable to be transferred to and its stock to become that of another company. The statutes were, no doubt, in accordance with the public wish at the time of their passage, the evident principle being to give every facility and aid, by the means suggested, to obtain a line of completed railroad to the eastern boundary of the State."

Town of East Lincoln vs. Davenport, 94 U. S. 801, 805.

Upon the principle of these cases, the acquisition of more franchises will certainly not destroy a privilege which is not affected by diminution of those already possessed; and, as the articles of consolidation and charter of the Manitowoc and Minnesota Company make clear, the Wisconsin Central Railroad franchises were merely increased by this consolidation, while its stock was not altered in amount or nature, and certainly not impaired in value.

FOURTH—It is not worth while to occupy the time of court by discussing the town's waiver of all irregularities and defects by its acceptance of the stock and its payment of interest. The stock was, by the terms of the proposition, to be deposited with the Trustee bank in New York "without unnecessary delay." The court finds that it was so deposited before the date of the bonds; and before any application to enjoin their issue; and it is not easy to see how an injunction obtained against the town by a discontented tax-payer before the interest is wholly paid, alters the legal inference from the act of the town in accepting the stock and paying that interest, until its payment was enjoined.

I submit this point without argument, because the case, as it stands, seems to make further argument unnecessary.

The defendant in error has fully met the town on every issue which its counsel chose to raise. He went to the jury upon the truth of the pretences set up by the town in its

pleadings; and the jury found those pretences were not based in truth. I now confidently urge that the learned counsel's legal positions are equally untenable; and submit the case to the court, believing that it is not necessary to further sustain our judgment by any argument, sound though it be, which rests on these waivers.

EDWIN H. ABBOT,

Attorney for Defendant in Error.

Supreme Court of the United States.

October Term, 1879. No. 284.

TOWN AND CITY OF MENASHA,

vs.

ROWLAND G. HAZARD.

In Error to U. S. Circuit Court, Eastern District of Wisconsin.

Laws and records of the State of Wisconsin referred to in the Transcript of Record, and in the Brief of Edwin H. Abbot, for the defendant in error, viz :

P. & L. Laws of 1866, c. 362, - - page 9
P. & L. Laws of 1866, c. 314, - - " 34
P. & L. Laws of 1869, c. 257 - - " 80
P. & L. Laws of 1870, c. 246, - - - " 67
P. & L. Laws of 1870, c. 369, - - " 70
Articles of consolidation of Portage, Stevens Point and Superior R. R. Co., with Portage, Winnebago and Superior R. R. Co., November 23, 1870, - - - - - " 80
P. & L. Laws of 1871, c. 27, - - " 83
P. & L. Laws of 1868, c. 342, - - - " 85
Articles of consolidation of the Manitowoc and Minnesota R. R. Co., with Wisconsin Central R. R. Co., July 1, 1871, - - - " 100
General Laws of 1869, c. 126, - - " 103
General Laws of 1871, c. 31, - - - " 106

sixty-six, chartering the Portage and Superior railroad company: *Provided*, that no portion of the lands belonging to said grant situated south of Stevens' Point, and which may be found outside of the ten-mile limits, measured from the modified line of said road, shall pass to said company under its grant, but such lands shall revert to the United States and become part of the public domain, to be disposed of as other public lands, and the acceptance of the provisions of this act by said company shall be held to be a relinquishment of the same; *And provided further*, That this act shall not be construed as increasing said grant, or as granting to said company and (*any*) lands whatever.

Lands outside of ten miles limit of modified line.

No new grant by this act.

APPROVED, March 3, 1875.

CHAPTER CCCLXII. P. & L. LAWS, 1866.

Published May 9, 1866.

AN ACT to incorporate the Portage and Superior railroad company, and to execute the trust created by an act of congress entitled "an act granting lands to aid in the construction of certain railroads in the state of Wisconsin," approved May 5th, 1864.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. John P. McGregor, S. W. Budlong, George Esterly, William H. Doe, Elisha W. Keyes, S. O. Raymond, John H. Rountree, Henry G. Webb, Asaph Whittlesey, H. P. Strong, W. W. Reed, H. S. Winsor, Thaddeus C. Pound, W. W. Corning, Henry L. Palmer, John Nazro, E. H. Galloway, Calvin H. Upham, John H. Warren, James T. Lewis, Robert Cochran, Jerome B. Harrison, Robert Fargo, William E. Smith, A. W. Starks, E. S. Minor, C. J. Pettibone, A. A. Bennett, Amasa Cobb, George E. Harrington, Frank Geele, John W. Allen, Yates Ashley, and such other persons, if any, as shall associate with them and become stockholders as hereinafter provided, are hereby created, constituted and declared a body corporate and politic, by the name and style of "the Portage and Superior railroad company;" and said corporation by and under its corporate name and style shall have perpetual succession, and shall have and enjoy all and singular the rights, powers, authority, privileges, franchises and immunities by and in this act expressly conferred, and

Corporators.

Name and powers.

all other such rights, powers, authority, privileges, franchises and immunities as are necessary and proper to the full and complete possession, exercise and enjoyment of those hereby expressly conferred. Said company may, and it shall have power, to purchase, hold and own woodland for the purpose of obtaining wood to operate or fence its railroads; but such woodland shall always be subject to assessment and taxation, and shall never be considered as a part of the property hereinafter exempt from taxation and assessment. Said company may also, and it shall have power, at pleasure to sell, lease and convey such woodlands, or any portion of them. Said company shall also have power to purchase, take, hold, sell, lease and convey all such estates, real, personal or mixed, other than the aforementioned woodlands, as may be necessary and proper to have, hold, use or possess for, in or about the construction or equipment, renewal, repair, maintaining or operating its railroads. Said company may also take, hold or occupy all such lands as may be given or granted to it by this state, or by the government of the United States, or both, for the purpose of aiding in the construction of any of its railroads; and after such last mentioned lands are so as above given or granted to said company, it may, subject to the terms, conditions, impositions, restrictions and limitations contained in such gift or grant, sell and convey the same, and may otherwise do with said land as is hereinafter provided. All other estates, property and effects which said company may purchase or acquire by gift or grant, other than that which is above in this section mentioned, shall always be subject to taxation and assessment, notwithstanding the exemptions hereinafter contained. Said company shall have power to make, have and use a common seal, and alter, break or renew the same at pleasure; and by and under its aforesaid corporate name and style, said company shall be capable of contracting and being contracted with for and as to the purposes in this act contained, of suing and being sued, of pleading and being impleaded, defending and being defended, answering and being answered unto, in law or in equity, in all courts and places whatsoever, as fully and completely as natural persons, except that it shall never set up the plea of usury to any contract to which it shall be a party, in any court whatever.

May purchase and sell woodland.

May purchase and sell other estates.

Subject to taxation.

Other powers.

Route of road.

SECTION 2. The company by this act created is hereby further authorized and empowered to survey,

locate, construct, complete, perpetually to have, use and enjoy, maintain and operate, a railroad, with one or more tracks or lines, from the city of Portage, in the county of Columbia, by the way of Stevens Point, in the county of Portage, to Bayfield, thence to Superior, on Lake Superior: *Provided*, that the said railroad from said Stevens Point to Superior, shall be located, constructed, maintained and operated by the said Portage and Superior railroad company, jointly and in common with any railroad company that may be authorized by act of the legislature to locate, construct and operate a railroad from Doty's Island, in the county of Winnebago, to Superior aforesaid, by way of Stevens Point aforesaid, having like powers, privileges and interests as are hereby conferred upon the company created by this act, so far as relates to the line of said railroad from Stevens Point to Superior; *And provided, further*, that the said Portage and Superior railroad company may at any time consolidate with any railroad company that may by act of the legislature be authorized to consolidate with the said Portage and Superior railroad company, upon terms to be mutually agreed on, in which case the said railroad from Stevens Point to Superior shall from the time of such consolidation be located, constructed, maintained and operated by the corporation arising therefrom.

Part of road may be built jointly with any other road.

May consolidate.

SECTION 3. The company hereby created is authorized and required to locate and construct the line of road authorized by this act to be constructed, from the said city of Portage, by the way of the city of Ripon, in the county of Fond du Lac, and the city of Berlin, in the county of Green Lake, to Stevens Point, and thence to Bayfield and to Superior, on Lake Superior: *Provided*, that the Congress of the United States shall, prior to the 4th day of March, A. D. 1867, give its assent to the route of the said railroad from the city of Portage to Bayfield, and to Superior, on Lake Superior, as in this section prescribed, and shall consent to the selection and application of the lands granted to the state of Wisconsin by the third section of the act of congress entitled "an act granting lands to aid in the construction of certain railroads in the state of Wisconsin," approved May 5th, 1864, for the purpose of aiding in the construction of a railroad from Portage city, Berlin, Doty's Island or Fond du Lac, in a northwestern direction to Bayfield, and thence to Superior, on

To build road by way of Ripon, &c.

Proviso.

Lake Superior, for and to the line of said railroad, as the same is defined and prescribed in this section, in the same manner and with the same effect as if the said railroad was located and constructed in strict accordance with and upon the route prescribed in the said act of congress. And the said Portage and Superior railroad company is hereby authorized and required to survey, locate and construct a railroad from the city of Fond du Lac to a point of connection with the said main line in the city of Ripon, in case the said main line shall be constructed by the way of Ripon, which said railroad from Fond du Lac to Ripon shall be commenced at the same time the construction of the said railroad shall be commenced at the said city of Portage, and shall be constructed simultaneously with the said road between Portage and Ripon, and shall be completed to the point of connection in the city of Ripon as soon as the said railroad shall be completed from Portage to the city of Ripon: *Provided*, that in case congress shall not assent to the change of the route of the said railroad, as proposed in this section, within the time above specified, then the company hereby created shall faithfully execute the trust in accordance with the said act of congress, and in that case nothing in this section contained shall be construed so as to impair any of the rights, privileges and benefits conferred by this act.

To build road from Fond du Lac to Ripon.

Proviso.

Other powers.

SECTION 4. The company hereby created shall have the perpetual right, power and authority to transport, take and carry property and persons upon said roads by the power and force of steam, of animals, or of any mechanical or other power, or of any combination of them, and to receive and store any property in any of its depots or other buildings, and to make, construct, maintain and use all such switches, turnouts, sidetracks and connecting tracks as it shall think necessary; and also construct, erect, maintain and use all such depots, station houses, warehouses, car houses and shops, engine houses, and all other buildings, fixtures and things useful for the accommodation of said company and its roads, and those using the same; to purchase or manufacture and own rails, chairs, spikes, engines, cars, tenders, and all other things necessary or useful for the construction or operation of a railroad, and to sell the same. And it shall also have the power and authority to operate its said roads, or either of them, in connection with any and all other railroads which

Connections.

may cross, come up to or connect with the said roads, or either of them, upon such terms as shall be mutually agreed upon by and between the said companies: *Provided*, that the said company in making any contracts as last aforesaid, shall give no preference to one company over any other such company or companies last above mentioned, but all such companies shall be upon the same equal terms; and whenever or so often as any such business connection contract shall be made and entered into, the same shall be in writing, duly signed and sealed with the seals of the companies parties thereto, in triplicate, and when so executed, one copy thereof shall be filed with the secretary of state, whose duty it shall be to mark thereon the time of its reception, and carefully to preserve and keep the same in his office, open to the inspection of all persons; and the copy so filed with the secretary of state, is hereby declared a public record. No such contract shall have any force or effect in law, unless such copy is filed with the secretary of state, as aforesaid. Either of the companies being a party to any such contract, may be compelled by a mandamus to file with the secretary of state a triplicate copy thereof; as aforesaid: *Provided*, *further*, that no agent or officer of said company shall be engaged in the purchase of any kind of produce or other property to be transported over any part of said road, and that no rebate or drawback shall be given by said company or any of its officers or agents, to any party or parties for the shipment of any freight to or from any station on said road, [other than] in accordance with published rates of freight of said company.

One copy of contract therefor to be filed with secretary of state.

Purchase and transportation of property by agents, &c.

SECTION 5. The company hereby created shall also have the right, power and authority to construct its said roads upon and along, across, under or over any public highway, or private way, or road, street, plankroad or railroad, if the same shall be necessary; but the said company shall restore such highway, private way, or road, street, plankroad or railroad to its former state or condition so as not to impair the usefulness of the same, so far as the same can be done consistently with the rights and privileges hereby granted to the company hereby created. Said company shall have the further right, power and authority to erect, maintain and use all the necessary bridges for the use of its railroads over any streams of water or water-course, at such point or points of crossing the same as they may locate the said railroads, with all necessary abutments, piers or other structures or foundations.

May build road across highways, &c.

Bridges.

May survey and locate road, and use lands on line of same.

SECTION 6. It shall be lawful for the company hereby created, and it shall have the right, power and authority, by its officers, engineers, agents, servants and workmen, to enter upon any land for the purpose of exploring, surveying, locating, and determining the route of said railroad; and when the said route or any portion thereof shall be determined by resolution adopted by the board of directors, it shall be lawful for the last aforesaid company, and it shall have the right, power and authority, by its officers, engineers, agents, contractors, surveyors, servants and workmen, at any time to enter upon, take, possess, occupy and use any land along and including the line of said route, not exceeding two hundred feet in width. It shall also be lawful for said company, and it shall have the right, power and authority, at any time to enter upon, take, possess and occupy and use any other lands beyond said limits of two hundred feet, which the directors shall, by resolution adopted by them, (a copy of which shall be recorded at the expense of said company in the office of the register of deeds in the county in which such lands are located,) declare to be necessary for the use of said company, for the purpose of erecting depot buildings, station houses, machine shops, freight houses, warehouses, engine houses, or buildings or fixtures of any kind, or ground about the same, for the convenient operation of the road, or for making drains, or giving proper direction to water-courses, or of directing or changing the channel of water-courses, or for the purpose of removing such substances and things as may endanger, obstruct or interfere with the free use of said road, or for the purpose of depositing earth, gravel or stone, or for the purpose of obtaining earth, gravel, stone, timber or other materials for embankments, structures or superstructures necessary to the construction, repair or renewal of said road. Said company shall, however, at such time and in such manner as is provided by and in this chapter and act, be liable to pay the full value of all earth, gravel, stone, timber and land which may be so as aforesaid taken, possessed, occupied and used for any of the purposes aforesaid, which is the private property of either persons or corporations, which value (unless the owner thereof and said company shall agree as to the same) shall be ascertained and determined in the manner hereinafter provided; and whenever the same shall have been paid, tendered or deposited, as provided in this act, an estate in and to all and

Compensation therefor.

When title to vest in company.

every such lands in fee simple, absolute forever, shall be and become vested in said company by virtue thereof, and of the provisions of this act, and by the same means a complete title shall vest in said company in and to all such earth, gravel, stone and timber; and whenever said company shall deem that the same, or any part or portion of the aforenamed property, shall no longer be necessary for the purposes for which the same were taken, it is hereby authorized and empowered, by deed or other instrument in writing, to lease or sell the same, or any part thereof.

Freight and fares.

SECTION 7. On the completion of said road, or any part thereof, it shall be lawful for said company, and it is hereby authorized and empowered, to demand and receive such sum or sums of money for the transportation of persons and property, and for the storage of property, as it shall from time to time deem reasonable.

Point of commencement—to have lands as road progresses

SECTION 8. The company hereby created shall commence the construction of its railroad at the aforesaid city of Portage, and for the purpose of estimating the amount of lands to which said company may be entitled on account of building such road, the said city of Portage shall be deemed the point of commencement; and the company shall be entitled to land in the manner specified by the act of congress, and as herein provided, as the road progresses from the said city of Portage, but in no other manner: *Provided, however*, that the company or companies herein authorized may construct or authorize to be constructed so much of the road as may be on the designated route from Bayfield to Superior, on Lake Superior, or one hundred miles thereof, on the line of the designated route, in a southerly direction from Bayfield, and shall be entitled to receive all the lands applicable to that purpose, as soon as the road may be constructed.

To have lands granted.

SECTION 9. The company hereby created shall be entitled to and invested with the title of the lands, and all and singular the rights, privileges and immunities granted or conferred, or intended to be granted or conferred, by section three of the act of Congress entitled, "an act granting lands to aid in the construction of certain railroads in the state of Wisconsin," approved May 5th, 1864: *Provided*, that the said Portage and Superior railroad company shall be entitled to and invested with an undivided one-half only of the said lands pertaining to that portion of the railroad authorized by this act, which shall be so located and constructed from the said Stevens Point to Superior; *and*

To have one-half of lands granted, between Stevens Point and Superior.

In case of consolidation.

provided further, that whenever the company hereby created shall become consolidated with any other railroad company, as in this act authorized, such consolidated company shall become entitled to and invested with all the lands granted by said act of congress pertaining to that portion of said railroad between the said Stevens Point and Superior, and to all or any other portion of other lands which have been or may hereafter be granted by act of congress or the legislature to any road of said companies so consolidated, as shall be determined or settled by articles of consolidation between said companies. Said company shall also be subject to all the restrictions, impositions, duties and obligations contained in said act of congress, so far as the same are applicable to the company hereby created, or to the road hereby authorized to be constructed: *Provided*, that the title to the lands in this section mentioned and contemplated shall not vest in said company sooner or faster than the lands might be sold, as provided and declared in the aforesaid act of congress; and the said lands are hereby granted in consideration of the company so hereby created complying with the terms of the grant hereby made, and of the aforesaid act of congress.

Title to lands.

Governor to certify completion of road by sections.

SECTION 10. The governor of this state, on the request of the president of the company hereby created, shall, without delay, from time to time, upon the completion of any and every twenty continuous miles of the railroad or railroads in this act authorized to be constructed, certify the fact of such completion to the secretary of the interior, in accordance with the provisions of the aforesaid act of congress.

If parts of lands granted shall have been sold, governor to appoint agents to select others, &c

SECTION 11. If when the line or lines of road authorized to be constructed by and under the provisions of this act, is or are located and definitely fixed by resolution adopted by the board of directors of the company hereby created, it shall appear that the United States have sold the whole or any part of any odd-numbered section granted by section three of the aforesaid act of congress, or that a right of pre-emption or homestead has attached to the same, as is mentioned or contemplated by the aforesaid act of congress, then the governor aforesaid shall without delay appoint such persons agents as to him shall seem proper, or as shall by said company, by resolution adopted by its board of directors, be designated to him, and whose duty it shall be to select other lands in lieu of those so sold by the United States, or to which the right of pre-emption was

attached, according to the true intent and meaning of the aforesaid act of congress; and such agents shall, at the expense of the company hereby created, select such other lands according to their appointment, and as is provided by the third section of the aforesaid act of congress: *Provided*, that such lands shall be selected within three years after the acceptance of the grant of land for railroad purposes, by the company hereby created. And said agents shall certify their selections to the governor from time to time, and with all convenient speed, and the governor shall thereupon, without delay, make known to the secretary of the interior the selections thus made; and so far as the selections shall be approved by the secretary of the interior, said selections shall be made and like proceedings had, from time to time, as in this section provided, until the whole amount of land is selected and approved, as is mentioned or contemplated by the third section of the aforesaid act of congress.

May hold and mortgage lands.

SECTION 12. The company hereby created shall be capable in law of taking and holding any land granted by the government of the United States or of this state, to aid in the construction of railroads, which shall be conveyed to said company by this act or deed, or by the operation of law; and may also mortgage or pledge or otherwise dispose of all their right, title, interest, claim or demand of, in or to any lands or interest in lands granted to said company by this act, and in any other estate, real, personal or mixed, of which they may be seized at the time of execution of such mortgage, or which they may acquire subsequently thereto, and in such manner and on such terms as the directors may think proper; and within five years after the title of such land shall have become vested in said railroad company, so much of them as may remain unsold, shall be offered for sale in limited quantities, at fair prices, preference being given to actual settlers.

Sale of balance

Board of directors.

SECTION 13. All the affairs and business of the company hereby created, shall be conducted, managed and carried on by a board of eighteen directors, who shall be stockholders of said company, and residents of the state of Wisconsin; and the board of directors is hereby invested with power and authority to conduct, manage and carry on the affairs and business of said company, and also with such power and authority as will carry or promote the carrying into full and complete effect the meaning and intent of this act. The di-

How to be chosen.

rectors, after the first board, shall be chosen by the stockholders of the company by ballot, as follows, viz: Six directors shall be chosen at the annual meeting of the stockholders, which shall be held on the first Wednesday in the month of May, in the year of our Lord one thousand eight hundred and sixty-eight, and there after annually, on the first Wednesday in the month of May, in each year, six directors shall be chosen. The annual meetings of the stockholders for the election of directors, shall be held at the city of Portage, in this state, unless otherwise established by the board of directors. At all meetings of the stockholders, the votes of the stockholders may be cast in person or by proxy duly authorized, and every stockholder shall be entitled to one vote for each and every share of stock held by him; and in all elections for directors, those stockholders, equal to the number of directors to be elected, having the greatest number of votes, shall be deemed and declared duly elected directors. The elections shall be conducted in such manner as shall be prescribed by the by-laws, or by resolution of the company. If for any cause an election of directors should not be had at the time when, by the provisions of this act, it should be had, the same may be held at such other time as shall be fixed by the by-laws of the company, and until such election be had, the directors of the preceding year shall continue to act, and the corporation shall not forfeit or lose any of its privileges, franchises or immunities by reason of the irregularity or want of any such election. At the first meeting of the board of directors of the company hereby created, they shall formally accept the trust lands granted for railroad purposes, and hereby conferred on the Portage and Superior railroad company, and file a notice of the acceptance of such grant, in the official name of such company, in the office of the secretary of state of this state, within two months after such meeting; and it shall be the further duty of said company to proceed without delay to locate the line of their road from Portage to Bayfield, and from thence to Superior; and within three years from the acceptance of this grant, the line of said road shall be definitely located, and an official map thereof filed in the office of the secretary of state, at Madison.

Meetings, election of directors, &c.

Acceptance of trust lands.

Definite location of road, and filing of map.

Quorum, and meetings.

SECTION 14. A majority of the board of directors shall constitute a quorum for the transaction of any business, except as in this act otherwise provided. They

shall meet at such times and places, and be convened in such manner, as they shall prescribe in the by-laws. They may fill any vacancy which may occur in their own board. They shall appoint one of their number to be president and one vice-president. The term of service of the president and vice-president shall be one year, and until a new election of directors. The president, when present, shall preside at all meetings of the directors and stockholders, and in case of his absence, the vice-president shall discharge the duties of president, and in case of the absence of the president and vice-president, the directors present may appoint a president *pro tem.*, who shall discharge the duties of president during the absence of the president and vice-president. The board of directors may appoint a secretary, treasurer, chief engineer, superintendent, attorneys, and such other officers and agents as they may find necessary, fix their compensation and duties, and demand adequate security for the discharge of their respective duties and trusts, and remove the same at pleasure. The directors shall have power to determine the amount of the first and all other installments by them ordered to be paid or assessed from time to time on stock subscriptions. The directors shall have power to require the payment of stock by installments, from time to time, in such amounts as may be necessary for the operations of the company; and they shall have power, from time to time, at any time within twenty-four months after the organization of said company hereby created, to require payment of the installments of the capital stock of said company from the stockholders, not exceeding in all twenty-five per centum upon each share of stock subscribed for and held by such stockholders, and not more than six and a quarter per cent. in each six months during any one of the first two years; and upon default in the payment of any such installment or installments upon any share or shares of such stock, for ninety days after personal notice shall have been given by the board of directors to the stockholders, the said board of directors shall have power to declare such share or shares on which default may be made, forfeited to the use of the said corporation, and the stockholders who shall have held the same, shall thereupon absolutely forfeit the same, and all sums paid thereon, to the use of said corporation; and after the expiration of the said twenty-four months last above mentioned, the board of directors shall have power, from time to time, to require payment of installments of the capital stock of said cor-

President and other officers.

Payments on and forfeiture of stock.

Forced collection of installments.

poration, at their discretion, until the stock shall have been fully paid; and upon default in the payment of any such installment of any share or shares of the said capital stock, whether such installments be required after or before the expiration of the said twenty-four months last mentioned, the board of directors shall have power to enforce the collection of payment of such installment or installments against the stockholder or stockholders making such default or owning such stock, and shall have the right to apply towards the payment of such installment or installments any dividend or other moneys accruing to such stockholder or stockholders in the hands of said corporation: *Provided, however*, that no person shall be personally liable for the payment of any installment or installments required on any share or shares of such capital stock which such person may have held, and which shall be required as aforesaid by the said board of directors, after such person shall have transferred such share or shares to any other person or persons; and no stockholder shall be entitled to vote at any election for directors of the said corporation, upon any share of such capital stock upon which any installment shall remain unpaid; nor shall any share of such capital stock be declared forfeited for a default in the payment of any installment required after the expiration of said twenty-four months, and after the payment of the said twenty-five per centum on each share. The directors shall have power to establish and regulate tolls and charges, not inconsistent with the provisions of this act, for the transportation of freight and passengers, and for the storage of freight, and to collect all such tolls and charges, and to make such covenants and agreements with any person or persons, copartnership or corporation whatever, as the construction and management of the road and conveniences and interests of the said company may require. The directors shall have power and authority to make and establish such by-laws as they may think proper respecting the property, concerns, affairs, business, stock and government of the corporation created by this act, and the powers and duties of its officers and committees, and its officers and committees may exercise all the powers which may be prescribed by such by-laws; and the directors may make such other rules, regulations and orders as they may think proper, but no such by-laws, rules, regulations or orders shall be inconsistent with this act, or with the constitution or laws of this state; and the directors shall have power,

In case of transfer.

Tolls.

By-laws.

in general, to superintend or direct all the operations, receipts, disbursements or all other affairs of said company.

First board of directors—their terms of office.

SECTION 15. The first board of directors of said company shall consist of the eighteen persons first named as corporators in the first section of this act. At the first meeting of the board of directors aforesaid, they shall first choose the president of said company, and a secretary, after which they shall ballot for their respective terms of office as directors, as follows: The president shall cause to be prepared eighteen pieces of paper, of as nearly the same size as may be, upon six of which shall be written, "term of one year," and upon six more shall be writen, "term of two years," and upon the remaining six shall be written, "term of three years." The said pieces of paper shall be then folded as nearly alike as conveniently can be done, after which the same shall be put into a box and well shaken. Each of the said directors, or in case of the absence of any director, the secretary in his name, shall then draw from the said box one of the said pieces of paper, and the secretary shall make a record of the said drawing, noting the term by each director drawn; and those who shall draw the ballots having thereon the words, "term of one year," shall hold their offices as directors until the first Wednesday in the month of May, in the year of our Lord 1869, and until their successors are duly elected. Those who shall draw the ballots having thereon the words, "term of two years," shall hold their offices as directors until the first Wednesday in the month of May, in the year next succeeding the year last aforesaid. Those who shall draw the ballots having thereon the words, "term of three years," shall hold their offices as directors until the first Wednesday in the month of May, in the year of our Lord 1871, and until their successors are duly elected.

Special meetings.

SECTION 16. Special meetings of the stockholders may be called by order of the board of directors, or by stockholders holding one-fourth of the capital stock, on twenty days' notice given to the stockholders, as provided by the by-laws of the company, specifying the object of the meeting.

May borrow money, &c.

SECTION 17. The company hereby created is hereby authorized and fully empowered, in its corporate capacity, to borrow any sum or sums of money from any person or persons, corporation or body politic of any kind, and for any rate of interest which may be agreed upon

by and between said company and any party of whom such money may be obtained; and to make, execute and deliver, in or out of this state, all necessary writings, notes, bills, bonds, mortgages and all other papers or securities, in amount or kind as may be deemed expedient by said corporation, in consideration of any such loan, or in discharge of any liabilities they may incur in the construction, repair, equipment or operation of said road, or in any of the transactions of the said company authorized by this act; and the said company is hereby authorized, in its corporate capacity, to make, execute, issue and deliver its bonds or obligations in such an amount as the directors shall think best for the interests of said company; and the directors of said company are hereby authorized and empowered to prescribe the sum or sums for which each of said bonds shall be issued, and time or times or place or places when and where the principal and interest of the same shall be payable, and whether payable to order or bearer, or how otherwise negotiable, the rate of interest which said bonds shall bear, and the manner and form in which the same and the interest coupons annexed to them shall be executed. And to secure the payment of any or all of said bonds, the said company is hereby authorized, in its corporate capacity, to make, execute and deliver a mortgage or mortgages, or deed or deeds of trust, upon the whole or any part of its railroad, constructed or authorized to be constructed, and upon the lands in this act granted to said corporation, and upon any other or all of its estate, real, personal or mixed, in possession or expectancy; and said company is hereby authorized and empowered, in and by such mortgage or deed of trust, to confer upon the trustee or mortgagee full and ample power to enter into and upon and to take possession of, have, use and enjoy, and to sell and dispose of, the whole or any part of said railroad or estate, real, personal or mixed, together with the functions appertaining to such railroad, and all corporate and other franchises, rights and privileges of the said railroad company, or to take up or remove any of the fixtures connected with said railroad; and the directors of said company are authorized and empowered to prescribe all matters relating to the form and terms of any such mortgage or deed of trust, and of its execution and delivery; and they are authorized and empowered to provide for the annual payment to such trustee or receiver as they

May issue bonds.

May give mortgage or deed of trust.

Sinking fund.

shall appoint, a certain sum to create a sinking fund, with which to pay off and discharge at or before maturing, any or all of the bonds by them authorized to be issued, and also to provide the manner in which such trustee or receiver shall pay out or dispose of said sinking fund, and to authorize him to designate by lot or in any other suitable manner, the bond or bonds to the payment of which said sinking fund, or any part of it, shall be applied; and the said company is hereby fully authorized and empowered, by its agents or brokers, or otherwise, either in or out of this state, to sell, loan, pledge, hypothecate or otherwise dispose of any or all of the aforesaid bonds hereby authorized to be issued, at par, or at any price greater or less than par, and for such sum or sums as they shall think proper; and the said company and its directors, officers and agents are hereby authorized and empowered to have, exercise and enjoy all the rights, privileges and powers herein conferred upon them, respectively.

To pay for lands taken.

SECTION 18. The company hereby created shall for all and every the lands and property which it shall appropriate, take, possess, occupy or use, pay the full and actual cash value thereof at the time it shall appropriate, take, occupy, possess or use such lands and property, and such value shall be ascertained, fixed and determined by mutual agreement between the said company and the owners of such land and property, respectively, or by and through the medium and appraisement and determination or award of commissioners appointed as herein provided. And the locating of the line of railroad of said company, or such part thereof as may be in parcels from time to time located by resolution adopted by the board of directors of said company, is hereby declared to be an appropriation, occupancy, taking, possessing or using said lands and property by said company, as authorized in this act, along, adjacent, opposite and including the line, or so much of the line of said railroad so as aforesaid located or adopted, for the purpose of fixing the time at which the value of said land and the proprerty shall be fixed, estimated, determined and paid by said company.

What deemed a taking of lands

Appointment of commissioners to appraise damages.

SECTION 19. It shall be lawful for and it is hereby made the duty of the judges of the circuit court in each judicial circuit, respectively, through which the line of the railroad or roads of the company hereby created shall be located, each of said judges in and for his own circuit, on the application of said company, and

at its cost and charge, to appoint as appraising commissioners under this act, three disinterested persons of sound mind, known integrity and approved judgment, and actual residents of the circuit of said judge. After such commissioners shall have been appointed as aforesaid, others may and shall from time to time be appointed by the same officers who made the first appointment, as need or occasion may require, in either of the following cases:

Vacancies.

1st. When any one of the persons therefor appointed, shall cease to be a resident of the circuit for which he was appointed.

2d. When such person shall decline to act, or to further act, as such commissioner.

3d. When such person shall neglect or fail to act as such commissioner for the space of eight days (*days*) after being requested so to act by the chief engineer or attorney of said company.

4th. When such person shall resign his said appointment.

5th. When such person shall die or be imprisoned, become insane, or shall from other cause become incapacitated or unable to in a proper manner discharge the duties imposed by this act upon such appointee.

Notice of application.

Before any such appointment as aforesaid shall be made, said company shall give notice to all whom it may concern, that an application by said company will be made at a time, place, and before a circuit judge in such notice named, for the appointment of three appraising commissioners, as provided in this act. Such notice shall be published weekly or oftener, for three successive weeks prior to the time set for hearing such application, in one or more newspapers printed in each or so many of the counties within the circuit for which the appointment is to be made, if there be in such circuit any such newspaper printed, and if there be none, then in every such case such notice shall be so as aforesaid published for the time aforesaid, in one or more newspapers printed at the capitol of the state; and the affidavit of the publisher or printer of each such newspaper of the fact of such publication, shall be sufficient legal evidence of such publication. The judge named in the notice may continue or adjourn the hearing of such application for such length of time as he shall think fit, not exceeding in the whole thirty days. Each person appointed as in this section provided, before entering upon the discharge of the duties devolving upon him, shall make an oath or

Oath.

affirmation in writing, in substance that he will in all respects, to the best of his ability, execute the trust reposed in him, and discharge the duty imposed upon him, as in this act contained. After said commissioners are sworn or affirmed as aforesaid, it shall be and is hereby made their duty, upon the application of said company, or of any land-owner in this section mentioned, to view and examine all and every the lands and property which by the provisions of this act, said company is authorized and empowered to appropriate, take and occupy, possess or use, by making payment therefor; and after such view and examination, said commissioners, or a majority of them, shall determine the value of all and every such lands and property, and in such determination or determinations said commissioners shall designate the sum to be paid by said company to the owners of such lands and property, respectively, in accordance with the provisions in this act contained; and when so done, the same shall be by said commissioners, or a majority of them, reported in writing, under their hands, to the circuit court of the county where such lands and property are situate. Such reports shall from time to time be made and deposited with the clerk of the circuit court for the proper county, who shall file and carefully preserve the same in his office. Such reports shall be so as aforesaid deposited within thirty days after the appraisements and determinations shall be completed in the county. In case no appeal shall be taken or made within thirty days after the depositing of any such report as aforesaid, then the clerk of such circuit court shall record the same, at the expense of said company; and said court shall enter judgment or judgments therein according to such report, on motion of said company, or on motion of any such property owner as aforesaid therein named, at any term of said court. Said commissioners shall have power under the provisions of this section, to do the things required of them in every case when the said company cannot agree with the owner or owners of such land and property as in this section before referred to, as to the value thereof, or when, by reason of the legal incapacity, non-residence of or absence from such circuit of any owner or owners, no such agreement can without delay be made. Said company or such owner or owners as aforesaid, may appeal from the decision of said commissioners, in each and every case, to the circuit court wherein is deposited any such report, within thirty days after the filing or

Commissioners to examine lands and report damages.

Appeal.

depositing thereof; and the matters of fact determined by said commissioners shall be determined upon such appeal by a jury, and the jury for such purposes impanneled, shall be sworn to and shall render a true verdict, according to the evidence, of the value of the land and property in controversy between said company and the owner or owners thereof, as provided in this act. Upon the verdict thus rendered, the like proceeding shall be had as to setting the same aside, granting a new trial, or rendering judgment thereon, as is the practice by law in civil cases between party and party. In case the verdict of the jury shall be for a less sum than that determined upon or fixed by said commissioners, the court shall render judgment for costs against the owner or owners. If such verdict be for a sum greater than that determined upon or fixed by said commissioners, in all cases where the appeal has been taken by the claimant, the court shall render judgment against said company for the sum found by the verdict, and for the costs; and upon such judgment, executions may be awarded and issued, as in ordinary cases of assumpsit. The aforesaid commissioners shall in no case proceed to determine or fix the value of the lands and property aforesaid, unless there has been previously thereto at least five days' notice given to such owner or owners, his or their agent or attorney, and to the attorney or agent of said company, of the time and place at which such proceedings were to be had, or unless such owner or owners is or are absent from such circuit, and having no agent or attorney known to such company or any of said commissioners resident in this state, or unless said owner or owners shall be minors, or *non compos mentis*. Such notice as aforesaid may be served upon the guardian or trustee of any minor, and upon the guardian, trustee or committee of any person *non compos mentis*, if within this state; and such service shall be valid, effectual, and shall be binding upon the owner or owners in like manner as though such minor or *non compos mentis* person were of full age and of sound mind. In all cases where notice cannot be given or served as aforesaid, said commissioners, at the expense of said company, shall cause to be published for three successive weeks prior to the time of any such hearing, in a paper printed in the county where the lands and property are situate, if any such newspaper is therein printed, and if not, then in a newspaper printed at the city of Portage, in this state, a notice to

Costs.

Notice of assessment of damages.

all persons who own land in such county, (naming the same,) that at a time and place therein designated, said commissioners will proceed to hear the parties in interest, and determine the value of the lands and property in said county, which by making payments therefor according to the provisions of this act, said company are authorized and empowered to appropriate, take, occupy, possess or use. Upon the making and filing or depositing of any such report as aforesaid, and payment into court, subject to be taken by the owner or owners aforesaid, or upon the legal tender of the amount to be paid as by said commissioners determined or fixed as aforesaid, to the owner or owners aforesaid, his or their agent, attorney, guardian, trustee, committee or legal representative, the said company, its agents, workmen, or the contractor or contractors for the making and repairing said railroad, may immediately take and use the said lands and property, without awaiting the determination of any matter to be disposed of upon any appeal made or taken as hereinbefore provided. Every person or body corporate who shall claim an interest in any such lands or property as is before in this section mentioned or referred to, whether by virtue of any tax sales, tax title, incumbrances or lien, legal, equitable or otherwise, is hereby declared to be an owner, or part owner, of such lands and property within the meaning of the foregoing provisions of this section. In all cases when the circuit courts of this state shall have rendered judgment against said company, as in this section provided, said company may pay to the clerk of such court the amount of each such judgment, and such clerk shall in writing receipt to said company therefor, and such payment is hereby declared to be a payment unto such court, and the same shall be as good and effectual a payment as though the money were paid personally to the person or persons or party or parties entitled thereto.

Company may use lands without awaiting result of appeal.

Who declared owners of land.

Judgments may be paid to clerk of court.

SECTION 20. The capital stock of the company hereby created, shall be two millions of dollars, which capital stock may be increased to a sum not exceeding ten millions of dollars, and said capital stock shall be and is hereby divided into shares of one hundred dollars each.

Capital stock.

SECTION 21. The company hereby created shall have no power or authority to sell or convey the road or roads to be constructed and operated under the provisions of this act, nor the franchises hereby granted;

Sale of road—consolidation.

nor shall they have the power or authority to consolidate the stock of this corporation or company with that of any other corporation or company, except by act of the legislature of this state, expressly granting such privilege.

Exemption from taxation.

SECTION 22. The lands granted or intended to be granted by the provisions of this act to the company hereby created, shall be and hereby are exempt from all assessments and from all taxation whatsoever for the term of ten years from the taking effect of this act, unless said company shall sooner sell or convey the same; and so much of said lands as shall be sold or conveyed by said company within ten years shall be subject to assessment and taxation, from time to time, as the same shall be as aforesaid sold and conveyed. And in consideration of the annual payment of a per centum (as provided in this section) by said company to this state, upon the gross earnings of said road to be built by said company as aforesaid, the railroad, its appurtenances and appendages, and all the other property, estate and effects of said company which by the provisions in this act contained, said company is authorized to acquire, purchase, hold, possess, enjoy or use for, in or about the construction, equipment, renewal, repair, maintaining or operating its railroad, as also the stock and capital of said company, shall be and hereby are forever exempt from all taxation and from all assessments. And in consideration of the grants made to and the privileges and franchises conferred upon the company hereby created, and of the exemption contained in this section, the said company shall, on or before the first day of March, in each year, pay into the treasury of this state three per centum on the gross earnings of the railroad so constructed, for the year ending on the last day of the preceding December, the firt payment of such per centage to commence or be made on the first of March next after fifty miles of the railroad of said company shall be completed; and the payment of such per centum annually as aforesaid, shall be and is in full of all taxation and assessments whatsoever as to the property in this section above exempt. And for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this state on or before the first day of February, in each year, the truth of which statement shall be verified by the affidavits of the treasurer and secretary of said company; and

Three per cent. of gross earnings to be paid into state treasury.

How earnings to be ascertained.

for the purpose of ascertaining the truth of such affidavits and the correctness of such abstracts, full power is hereby vested in the governor of this state or any other person appointed as by law prescribed to examine the books and papers of said company, and to examine under oath the officers, agents and employees of said company and other persons; and if any person so examined by the governor or other authorized person, shall knowingly and willfully swear falsely concerning the matter aforesaid, every such person is hereby declared to have committed perjury. And for securing to the state the payment of the aforesaid per centum, it is hereby declared that the state shall have a lien upon the railroad of said company and upon all the other property, estate and effects of said company, whether real, personal or mixed, and the lien hereby secured to the state shall take and have precedence of all demands, decrees and judgments against said company.

Lien.

SECTION 23. The first board of directors of the company hereby created, is hereby authorized and empowered to and shall open books, and shall receive subscriptions to the capital stock of said company to the extent of two millions of dollars, and no more, commencing on the eighth day of May, A. D. 1866, or as soon thereafter as practicable, and the same shall be done at the city of Portage, in some convenient and public room, which shall be accessible to all persons from day to day, between the hours of nine o'clock in the forenoon and four o'clock in the afternoon of each day that may as aforesaid be occupied in making subscriptions. Such subscription books shall be kept open between the hours aforesaid for four days, unless the said two millions of dollars capital stock shall all be sooner subscribed, and at the end of said four days, the said subscription books shall be closed; or should the said two millions of dollars stock be sooner subscribed, and five per cent. thereon in money actually paid in, then in that case the books shall be closed. After said books are closed, they shall remain closed for thirty days.

Opening of books of subscription.

SECTION 24. All persons who shall become subscribers to the capital stock of said company, shall at the time of subscription pay in money five per cent., or five dollars upon each share subscribed; and all and every the five per cent. aforesaid, when paid in, shall remain in the treasury of said company until paid out for the use and benefit of said company in the due administration of its affairs, in the location, construction, equipment

Five per cent. to be paid at time of subscribing.

or operating its railroads in this act authorized to be constructed; and no person shall be permitted to subscribe more than two hundred and fifty shares within the first three and a half of the four days in the next preceding section mentioned. And in case there should be present within the said three and a half days, persons desirous of subscribing to the capital stock of said company within the aforesaid limits of two hundred and fifty shares to each person, and to sums amounting in the aggregate to more than the said two millions of dollars, then and in that case the said board of directors shall apportion said stock to the amount of two million dollars among said subscribers, *pro rata*, and according to the amount subscribed by them, respectively. All stock subscriptions within the first three days after the opening of the books, as in the next preceding section, shall be subscribed by and for such persons as were residents of this state on the first day of January, 1866, and after which three days any person may subscribe to said stock, whether residents of this state or not. Subscriptions to said two millions of dollars of stock may be made in person or by proxy, but no person shall have power, as proxy, to subscribe for more than two persons; and the authority of every person to subscribe as the proxy of another, shall be contained in an instrument of writing, signed by the principal, and such instruments shall be preserved by the secretary of said company, as a part of its papers: *Provided*, that no stock shall be subscribed within the first three days aforesaid by or for any person who is not an actual resident in this state at the time of such subscription.

Pro rata apportionment of stock.

Resident and non-resident subscribers.

Subscriptions by proxy.

Number of directors necessary to act in relation to subscriptions to original stock.

SECTION 25. In all matters pertaining to the subscription of the aforesaid two millions of stock, no less number than ten directors shall have power to do any act except adjourn, and a majority of those present must agree to make valid any act done by them as such directors. And as to taking the said first two millions of dollars of stock, the said first board of directors may make by-laws: *Provided*, that at least eight of the directors aforesaid, over their signatures, approve of the same, and that they be not inconsistent with or repugnant to the provisions of this act. Such special by-laws shall be provided by the secretary, and the same shall ever remain a part of the records of said company.

Directors may take stock.

SECTION 26. The members of said first board of directors shall have the same rights as other persons to subscribe to the capital stock of said company.

Certificates of stock.

SECTION 27. No certificate of stock shall ever be made out or issued to any person who has not subscribed to the capital stock of said company, as provided in this act, nor for any greater amount than has been so actually subscribed by the person to whom said stock is issued; and any and all certificates of stock in said company issued contrary to the provisions of this section, shall be void. No certificate of stock shall be issued to any person until at least eight of the directors of said company shall have found that the same is for [the] true amount subscribed by the person named in the certificate, or his assignor, and that the same is numbered and is of the same date and for the same amount or number of shares as appears in a book of registered stock, and which book shall be kept by said company, and such registry said eight directors, at least, shall over their signatures in said book certify to be correct.

Change of venue.

SECTION 28. In all cases of appeal from the determination of the appraising commissioners, as provided in this act, a change of venue shall be allowed and rendered by the court to which such appeal shall be made, or by the judge thereof, in case any credible person shall make and file with the clerk of such court an affidavit, in which the affiant states that he knows or really believes that the appellant or appellee cannot, before the judge of such court, or before a jury of the county where such appeal shall be pending, obtain a fair trial. Such change of venue shall be to some county in this state where the cause stated in the affidavit for such change does not exist, and which shall best accommodate the parties litigant and their witnesses. On the trial or hearing of cases appealed from the determination of the appraising commissioners, as in this act provided, exceptions may be taken to the decision of the court or judge, and like proceedings had to and upon final judgment rendered in such cases, as in ordinary civil cases wherein an issue of fact is joined.

May purchase or consolidate with other road in line of that proposed.

SECTION 29. In case any other railroad company now organized under the provisions of any law of this state, shall have surveyed and definitely located or in part constructed a line of railroad along or upon, or nearly along or upon, the proposed line of railroad hereby authorized, the said company shall have power to make such arrangements for the purchase of or consolidation or connection with such other line of railroad, or such railroad company, as may be agreed upon

by and between the said railroad companies. For the purpose of such purchase or consolidation, the company hereby created shall have power and authority to issue its stock in lieu of or in exchange for the stock of such other railroad company: *Provided*, that no person shall be credited upon any stock so issued, with the payment of any greater sum thereon than the amount actually paid in upon the stock in lieu of or in exchange for which such stock is issued, nor shall the amount so paid in be in any case less than five per cent. of the amount of stock so issued.

Property taken for public use.

SECTION 30. All property which the company hereby created is authorized to appropriate, take, possess, hold or use, by making payment therefor, as in this act provided, is hereby declared to be taken for public use, so soon as the company shall so appropriate, take, possess, hold or use the same.

Company to maintain fences

SECTION 31. The company hereby created shall fence its railroad in parcels, as it shall from time to time operate the same, within one year from the time it shall commence the operating any and every such parcel until the whole of said railroads are in good, proper, substantial and workmanlike manner fenced throughout the entire extent of the lines thereof: *Provided*, that should the said company fail or neglect to build said fence, according to the provisions of this section, the owner of the lands through which said roads pass, may build said fence, and collect the costs for building the same of the owners or operators of said road.

Application of proceeds of lands sold.

SECTION 32. The avails or proceeds of the lands hereby granted to said company, shall be used exclusively for the construction of the railroad authorized by this act, and for no other purpose. The said lands are by this act granted to said company, subject to all the provisions, restrictions and limitations of the act of congress granting the said lands to this state, for the purpose of aiding in the construction of certain railroads in this state, approved May 5th, 1864, so far as the same are applicable thereto.

Objects not otherwise attainable.

SECTION 33. It is hereby declared that in the judgment of the legislature of this state, the objects of the corporation hereby created cannot be attained under general laws.

Not to consolidate with N. W. R. R.

SECTION 34. The company hereby created is hereby prohibited from consolidating in any manner with the company known as the Northwestern railroad company.

SECTION 35. This act is hereby declared to be a public act, and the same, immediately after the passage thereof, shall be printed by the state printer, and thus published shall take effect and be in full force. Public act, &c.

APPROVED, April 9, 1866.

CHAPTER CXCVI.—P. & L. LAWS, 1867.

[*Published April* 6th, 1867.]

AN ACT to provide for taking subscriptions to the capital stock of the Portage and Superior railroad company.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. The executive committee of the board of directors of the Portage and Superior railroad company are hereby authorized and empowered to open books and receive subscriptions to the capital stock of the said company, at such time or times and at such place or places within this state as the said executive committee may determine, and to keep such books open for the time, or until subscriptions to the said capital stock shall be received to the extent prescribed in sections twenty-three (23) and twenty-four (24) of the act by which the said company was incorporated; and all the powers conferred upon the board of directors of the said company, or upon any number of the said directors less than the whole number, in and by chapter three hundred and sixty-two of the private and local laws of 1866, approved April 9th, 1866, entitled "an act to incorporate the Portage and Superior railroad company, and to execute the trust created by an act of congress, entitled 'an act granting lands to aid in the construction of certain railroads in the state of Wisconsin,' approved May 5th, 1864," relating to the opening of books and receiving subscriptions to the capital stock of the said Portage and Superior railroad company, are hereby conferred upon and may be exercised by the executive committee of the said board of directors. The said executive committee shall have power and they are hereby authorized to appoint agents to receive subscriptions to the capital stock of the said company: *Provided, however*, that no subscription to the

May open books of subscription.

Powers conferred on executive committee.

constructed, maintained and operated by the company hereby created, jointly and in common with any railroad company that may be authorized by act of the legislature to locate, construct and operate a railroad from Portage city, in the county of Columbia, to Superior aforesaid, by way of Stevens Point aforesaid, having and possessing like powers, privileges, rights and interests as are hereby conferred upon the company created by this act, so far as relates to the line of said railroad from Stevens Point to Superior; *and provided, further*, that the said Winnebago and Superior railroad company may at any time consolidate with any railroad company that may by act of the legislature be authorized to consolidate with the company hereby created, upon terms to be mutually agreed upon, in which case the said railroad from the said Stevens Point to Superior shall from the time of such consolidation be located, constructed, maintained and operated by the corporation arising therefrom. The company hereby created is hereby prohibited from consolidating with the company known as the Chicago and Northwestern railway company.

May consolidate.

Prohibition.

Further powers.

SECTION 3. The company hereby created shall have the perpetual right, power and authority to transport, take and carry property and persons upon said roads, by the power and force of steam, of animals, or of any mechanical or other power, or of any combination of them, and to receive and store any property in any of its depots or other buildings, and to make, construct, maintain and use all such switches, turnouts, side tracks and connecting tracks as it shall think necessary; and also construct, erect, maintain and use all such depots, station houses, warehouses, car houses and shops, engine houses, and all other buildings, fixtures and things useful for the accommodation of said company and its roads, and those using the same; to purchase or manufacture and own rails, chairs, spikes, engines, cars, tenders, and all other things necessary or useful for the construction or operation of a railroad, and to sell the same. And it shall also have power and authority to operate its said roads, or either of them, in connection with any and all other railroads which may cross, come up to or connect with the said roads, or either of them, upon such terms as shall be mutually agreed upon by and between the said companies: *Provided*, that the said company in making any contracts as last aforesaid, shall give no preference to one com-

Constructions.

pany over any other such company or companies last above mentioned, but all such companies shall be upon the same equal terms; and whenever and so often as any such business connection contract shall be made and entered into, the same shall be in writing, duly signed and sealed with seals of the companies parties thereto, in triplicate, and when so executed, one copy thereof shall be filed with the secretary of state, whose duty it shall be to mark thereon the time of its reception, and carefully to preserve and keep the same in his office, open to the inspection of all persons; and the copy so filed with the secretary of state is hereby declared a public record. No such contract shall have any force or effect in law, unless such copy is filed with the secretary of state, as aforesaid. Either of the companies being a party to any such contract, may be compelled by a mandamus to file with the secretary of state a triplicate copy thereof, as aforesaid: *Provided, further*, that no agent or officer of said company shall be engaged in the purchase of any kind of produce or other property to be transported over any part of said road, and that no rebate or drawback shall be given by said company, or any of its officers or agents, to any party or parties for the shipment of any freight to or from any station on said road, other than in accordance with published rates of freight of said company.

One copy of contract therefor to be filed with secretary of state.

Purchase and transportation of property by agents, &c.

SECTION 4. The company hereby created shall also have the right, power and authority to construct its said roads upon and along, across, under or over any public highway, or private way, or road, street, plankroad or railroad, if the same shall be necessary; but the said company shall restore such highway, private way, or road, street, plankroad or railroad to its former state or condition, so as not to impair the usefulness of the same, so far as the same can be done consistently with the rights and privileges hereby granted to the company hereby created. Said company shall have the further right, power and authority to erect, maintain and use all the necessary bridges for the use of its railroads over any streams of water or water-course, at such point or points of crossing the same as they may locate the said railroads, with all necessary abutments, piers or other structures or foundations.

May build road across highways, &c.

Bridges.

SECTION 5. It shall be lawful for the company hereby created, and it shall have the right, power and authority, by its officers, engineers, agents, servants

May survey and locate road, and use lands on line of same.

and workmen, to enter upon any land for the purpose of exploring, surveying, locating and determining the route of said railroad; and when the said route or any portion thereof shall be determined by resolution adopted by the board of directors, it shall be lawful for the last aforesaid company, and it shall have the right, power and authority, by its officers, engineers, agents, contractors, surveyors, servants and workmen, at any time to enter upon, take, possess, occupy and use any land along and including the line of said route, not exceeding two hundred feet in width. It shall also be lawful for said company, and it shall have the right, power and authority, at any time to enter upon, take, possess and occupy and use any other lands beyond said limits of two hundred feet, which the directors shall, by resolution adopted by them, (a copy of which shall be recorded at the expense of said company in the office of the register of deeds in the county in which such lands are located,) declare to be necessary for the use of said company, for the purposes of erecting depot buildings, station houses, machine shops, freight houses, warehouses, engine houses, or buildings or fixtures of any kind, or ground about the same, for the convenient operation of the road, or for making drains, or giving proper direction to water courses, or of directing or changing the channel of water-courses, or for the purpose of removing such substances and things as may endanger, obstruct or interfere with the free use of said road, or for the purpose of depositing earth, gravel or stone, or for the purpose of obtaining earth, gravel or stone, timber or other materials for embankments, structures or superstructures necessary to the construction, repair or renewal of said roads. Said company shall, however, at such time and in such manner as is provided by and in this chapter and act, be liable to pay the full value of all earth, gravel, stone, timber and land which may be so as aforesaid taken, possessed, occupied and used for any of the purposes aforesaid, which is the private property of either persons or corporations, which value, unless the owner thereof and said company shall agree as to the same, shall be ascertained and determined in the manner hereinafter provided; and whenever the same shall have been paid, tendered or deposited, as provided in this act, an estate in and to all and every such lands in fee simple, absolute forever, shall be and become vested in said company by virtue thereof, and of the provisions of this act, and by the same means a complete title shall

Compensation therefor.

vest in said company in and to all such earth, gravel, stone and timber; and whenever said company shall deem that the same or any part or portion of the aforenamed property, shall no longer be necessary for the purposes for which the same were taken, it is hereby authorized and empowered, by deed or other instrument in writing, to lease or sell the same, or any part thereof. When title to vest in company.

SECTION 6. On the completion of said road, or any part thereof, it shall be lawful for said company, and it is hereby authorized and empowered, to demand and receive such sum or sums of money for the transportation of persons and property, and for the storage of property, as it shall from time to time deem reasonable. Freight and fares.

SECTION 7. The company hereby created shall commence the construction of its railroad at the aforesaid Doty's Island or Stevens Point, and for the purpose of estimating the amount of lands to which said company may be entitled on account of building such road, the said Stevens Point shall be deemed the point of commencement; and the company shall be entitled to land in the manner specified by the act of congress, and by this act, as the road progresses from the said Stevens Point, but in no other manner: *Provided*, *however*, that the company or companies herein authorized may construct or authorize to be constructed so much of the road as may be on the designated route from Bayfield to Superior, on Lake Superior, or one hundred miles thereof, on the line of the designated route, in a southerly direction from Bayfield, and shall be entitled to receive all the lands applicable to that purpose, as soon as the road may be constructed. Point of commencement—to have lands as road progresses.

SECTION 8. The company hereby created shall be entitled to and invested with the title to one equal undivided half of the lands pertaining to that portion of the road of said company which shall be so located and constructed from the said Stevens Point to Superior, and all and singular the rights, privileges and immunities granted or conferred, or intended to be granted or conferred, by section three of the act of congress entitled "an act granting lands to aid in the construction of certain railroads in the state of Wisconsin," approved May 5th, 1864. Said company shall also be subject to all the restrictions, impositions, duties and obligations contained in said act of congress, so far as the same are applicable to the company hereby created, or to the road hereby authorized to be constructed: *Provided*, that the title to the To have one-half of lands granted, between Stevens Point and Superior. Title to lands.

lands in this section mentioned and contemplated, shall not vest in said company sooner or faster than the lands might be sold, as provided and declared in the aforesaid act of congress; and the said lands are hereby granted in consideration of the company so hereby created, complying with the terms of the grant hereby made, and of the aforesaid act of congress: *Provided*, that whenever the company hereby created shall become consolidated with any other railroad company, as in this act authorized, such consolidated company shall become entitled to and invested with the title to all the lands granted by said act of congress, pertaining to that portion of said railroad between the said Stevens Point and Superior, and to all or any other portion of other lands which have been or may hereafter be granted by act of congress or of the legislature of this state to any road of said companies so consolidated, as shall be determined or settled in articles of consolidation between said companies.

Ibid, in case of consolidation.

Governor to certify completion of road by sections.

SECTION 9. The governor of this state on the request of the president of the company hereby created, shall, without delay, from time to time, upon the completion of any and every twenty continuous miles of the railroad or railroads in this act authorized to be constructed, certify the fact of such completion to the secretary of the interior, in accordance with the provisions of the aforesaid act of congress.

If parts of lands granted shall have been sold, governor to appoint agents to select others, &c.

SECTION 10. If when the line or lines of road authorized to be constructed by and under the provisions of this act, is or are located and definitely fixed by resolution adopted by the board of directors of the company hereby created, it shall appear that the United States have sold the whole or any part of any odd-numbered section granted by section three of the aforesaid act of congress, or that a right of pre-emption or homestead has attached to the same, as is mentioned or contemplated by the aforesaid act of congress, then the governor aforesaid shall, without delay, appoint such persons agents as to him shall seem proper, or as shall by said company, by resolution adopted by its board of directors, be designated to him, and whose duty it shall be to select other lands in lieu of those so sold by the United States, or to which the right of pre-emption was attached, according to the true intent and meaning of the aforesaid act of congress; and such agents shall, at the expense of the company hereby created, select such other lands according to their appointment, and as is provided by the third section of the aforesaid act of

congress: *Provided*, that such lands shall be selected within three years after the acceptance of the grant of land for railroad purposes, by the company hereby created. And said agents shall certify their selections to the governor from time to time, and with all convenient speed, and the governor shall thereupon, without delay, make known to the secretary of the interior the selections thus made; and so far as the selections shall be approved by the secretary of the interior, said selections shall be made and like proceedings had, from time to time, as is in this section provided, until the whole amount of land is selected and approved, as is mentioned or contemplated by the third section of the aforesaid act of congress.

May hold and mortgage lands

SECTION 11. The company hereby created shall be capable in law of taking and holding any land granted by the government of the United States, or of this state, to aid in the construction of railroads, which shall be conveyed to said company by this act or deed, or by the operation of law; and may also mortgage or pledge or otherwise dispose of all their rights, title, interest, claim or demand of, in or to any lands or interest in lands granted to said company by this act, and in any other estate, real, personal or mixed, of which they may be seized at the time of execution of such mortgage, or which they may acquire subsequently thereto, and in such manner and on such terms as the directors may think proper; and within five years after the title of such lands shall have become vested in said railroad company, so much of them as may remain unsold, shall be offered for sale in limited quantities, at fair prices, preference being given to actual settlers.

Sale of balance.

Board of directors.

SECTION 12. All the affairs and business of the company hereby created shall be conducted, managed and carried on by a board of fifteen directors, who shall be stockholders of said company and residents of the state of Wisconsin, and the board of directors is hereby invested with power and authority to conduct, manage and carry on the affairs and business of said company, and also with such power and authority as will carry or promote the carrying into full and complete effect the meaning and intent of this act. The directors, after the first board, shall be chosen by the stockholders of the company by ballot, as follows, viz: Three directors shall be chosen at the annual meeting of the stockholders, which shall be held on the first Wednesday in the month of May, in the year of our Lord one

How to be chosen.

thousand eight hundred and sixty-eight, and thereafter annually on the first Wednesday in the month of May, in each year, three directors shall be chosen. The annual meetings of the stockholders for the election of directors, shall be held at Doty's Island, in this state, unless otherwise established by the board of directors. At all meetings of the stockholders, the votes of stockholders may be cast in person or by proxy duly authorized, and every stockholder shall be entitled to one vote for each and every share of stock held by him; and in all elections for directors, those stockholders, equal to the number of directors to be elected, having the greatest number of votes, shall be deemed and declared duly elected directors. The elections shall be conducted in such manner as shall be prescribed by the by-laws, or by resolution of the company. If for any cause an election of directors should not be had at the time when, by the provisions of this act, it should be had, the same may be held at such other time as shall be fixed by the by-laws of the company, and until such election be had the directors of the preceding year shall continue to act, and the corporation shall not forfeit or lose any of its privileges, franchises or immunities by reason of the irregularity or want of any such election.

Meetings, election of directors &c.

Acceptance of trust lands.

At the first meeting of the board of directors of the company hereby created, they shall formally accept the trust lands granted for railroad purposes, and hereby conferred on the Winnebago and Superior railroad company, and file a notice of the acceptance of such grant, in the official name of such company, in the office of the secretary of state of this state, within two months after such meeting; and it shall be the further duty of said company to proceed without delay to locate the line of their road from Doty's Island, by the way of Stevens Point, to Bayfield, and from thence to Superior; and within two years from the acceptance of this grant, the line of the road shall be definitely located, and an official map thereof filed in the office of the secretary of state, at Madison.

Definite location of road, and filing of map.

Quorum, and meetings.

SECTION 13. A majority of the board of directors shall constitute a quorum for the transaction of any business, except as in this act otherwise provided. They shall meet at such times and places, and be convened in such manner, as they shall prescribe in the by-laws. They may fill any vacancy which may occur in their own board. They shall appoint one of their number to be president, and one vice-president. The term of service of the president and vice-president shall be one year,

President, and other officers.

and until a new election of directors. The president when present, shall preside at all meetings of the directors and stock-holders, and in case of his absence, the vice-president shall discharge the duties of President, and in case of the absence of the president and vice-president, the directors present may appoint a president *pro tem.*, who shall discharge the duties of president during the absence of the president and vice-president. The board of directors may appoint a secretary, treasurer, chief engineer, superintendent, attorneys, and such other officers and agents as they may find necessary, fix their compensation and duties, and demand adequate security for the discharge of their respective duties and trusts, and remove the same at pleasure. The directors shall have power to determine the amount of the first and all other installments by them ordered to be paid or assessed from time to time on stock subscriptions. The directors shall have power to require the payment of stock by installments, from time to time, in such amounts as may be necessary for the operations of the company; and they shall have power from time to time, at any time within twenty-four months after the organization of said company hereby created, to require payment of the installments of the capital stock of said company from the stockholders, not exceeding in all twenty-five per centum upon each share of stock subscribed for and held by such stockholders, and not more than six and a quarter per cent. in each six months during any one of the first two years; and upon default in the payment of any such installment or installments upon any share or shares of such stock for ninety days after personal notice shall have been given by the board of directors to the stockholders, the said board of directors shall have power to declare such share or shares on which default may be made, forfeited to the use of the said corporation, and the stockholders who shall have held the same, shall thereupon absolutely forfeit the same, and all sums paid thereon, to the use of said corporation; and after the expiration of the said twenty-four months last above mentioned, the board of directors shall have power, from time to time, to require payment of installments of the capital stock of said corporation, at their discretion, until the stock shall have been fully paid; and upon default in the payment of any such installment of any share or shares of the said capital stock, whether such installments be required after or before the expiration of the said twenty-four months last

Payments on and forfeiture of stock.

Forced collection of installments.

mentioned, the board of directors shall have power to enforce the collection of payment of such installment or installments against the stockholder or stockholders making such default or owning such stock, and shall have the right to apply towards the payment of such installment or installments any dividend or other moneys accruing to such stockholder or stockholders in the hands of the said corporation: *Provided, however*, that no person shall be personally liable for the payment of any installment or installments required on any share or shares of such capital stock which such person may have held, and which shall be required as aforesaid by the said board of directors, after such person shall have transferred such share or shares to any other person or persons; and no stockholder shall be entitled to vote at any election for directors of the said corporation, upon any share of such capital stock upon which any installment shall remain unpaid; nor shall any share of such capital stock be declared forfeited for a default in the payment of any installment required after the expiration of said twenty-four months, and after the payment of the said twenty-five per cent. on each share. The directors shall have power to establish and regulate tolls and charges, not inconsistent with the provisions of this act, for the transportation of freight and passengers, and for the storage of freight, and to collect all such tolls and charges, and to make such covenants and agreements with any person or persons, copartnership or corporation whatever, as the construction and management of the road and conveniences and interests of the said company may require. The directors shall have power and authority to make and establish such by-laws as they may think proper respecting the property, concerns, affairs, business, stock and government of the corporation created by this act, and the powers and duties of its officers and committees, and (*and*) its officers and committees may exercise all the powers which may be prescribed by such by-laws; and the directors may make such other rules, regulations and orders as they may think proper, but no such by-laws, rules, regulations or orders shall be inconsistent with this act, or with the constitution or laws of this state; and the directors shall have power, in general, to superintend or direct all the operations, receipts, disbursements [and] all other affairs of said company.

In case of transfer.

Tolls.

By-laws.

First board of directors—their terms of office.

SECTION 14. The first board of directors of said company shall consist of the fifteen persons first named

as corporators in the first section of this act. At the first meeting of the board of directors aforesaid, they shall first choose the president of said company, and a secretary, after which they shall ballot for their respective terms of office as directors, as follows: The president shall cause to be prepared fifteen pieces of paper, of as nearly the same size as may be, upon five of which shall be written "term of one year," and upon five more shall be written "term of two years," and upon the remaining five shall be written "term of five [three] years." The said pieces of paper shall be then folded as nearly alike as conveniently can be done, after which the same shall be put into a box and well shaken. Each of the said directors, or in case of the absence of any director, the secretary in his name, shall then draw from the said box one of the said pieces of paper, and the secretary shall make a record of the said drawing, noting the term by each director drawn; and those who shall draw the ballots having thereon the words "term of one year," shall hold their offices as directors until the first Wednesday in the month May, in the year of our Lord 1869, and until their successors are duly elected. Those who shall draw the ballots having thereon the words "term of two years," shall hold their offices as directors until the first Wednesday in the month May, in the year next succeeding the year last aforesaid. Those who shall draw the ballots having thereon the words "term of three years," shall hold their offices as directors until the first Wednesday in the month of May, in the year of our Lord 1871, and until their successors are duly elected.

Special meetings.

SECTION 15. Special meetings of the stockholders may be called by order of the board of directors, or by stockholders holding one-fourth of the capital stock, on twenty days' notice given to the stockholders, as provided by the by-laws of the company, specifying the object of the meeting.

May borrow money, &c.

SECTION 16. The company hereby created is hereby authorized and fully empowered, in its corporate capacity, to borrow any sum or sums of money from any person or persons, corporation or body politic of any kind, and for any rate of interest which may be agreed upon by and between said company and any party of whom such money may be obtained; and to make, execute and deliver, in or out of this state, all necessary writings, notes, bills, bonds, mortgages and all other papers or securities, in amount or kind as may be deem-

ed expedient by said corporation, in consideration of any such loan, or in discharge of any liabilities they may incur in the construction, repair, equipment or operating of said road, or in any of the transactions of the said company authorized by this act; and the said company is hereby authorized, in its corporate capacity, to make, execute, issue and deliver its bonds or obligations in such an amount as the directors shall think best for the interests of said company; and the directors of said company are hereby authorized and empowered to prescribe the sum or sums for which each of said bonds shall be issued, and the time or times or place or places when and where the principal and interest of the same shall be payable, and whether payable to order or bearer, or how otherwise negotiable, the rate of interest which said bonds shall bear, and the manner and form in which the same and the interest coupons annexed to them shall be executed. And to secure the payment of any or all of said bonds, the said company is hereby authorized, in its corporate capacity, to make, execute and deliver a mortgage or mortgages, or deed or deeds of trust, upon the whole or any part of its railroad, constructed or authorized to be constructed, and upon the lands in this act granted to said corporation, and upon any other or all of its estate, real, personal or mixed, in possession or expectancy; and said company is hereby authorized and empowered, in and by such mortgage or deed of trust, to confer upon the trustee or mortgagee full and ample power to enter upon and to take possession of, have, use and enjoy, and to sell and dispose of the whole or any part of said railroad or estate, real, personal or mixed, together with the functions appertaining to such railroad, and all corporate and other franchises, rights and privileges of the said railroad company, or to take up or remove any of the fixtures connected with said railroad; and the directors of said company are authorized and empowered to prescribe all matters relating to the form and terms of any such mortgage or deed of trust, and of its execution and delivery; and they are authorized and empowered to provide for the annual payment to such trustee or receiver as they shall appoint a certain sum to create a sinking fund, with which to pay off and discharge at or before maturing any or all of the bonds by them authorized to be issued, and also to provide the manner in which such trustee or receiver shall pay out or dispose of said sinking fund, and to authorize him

May issue bonds.

May give mortgage or deed of trust.

Sinking fund.

to designate by lot, or in any other suitable manner, the bond or bonds to the payment of which said sinking fund, or any part of it, shall be applied: and the said company is hereby fully authorized and empowered, by its agents or brokers, or otherwise, either in or out of this state, to sell, loan, pledge, hypothecate or otherwise dispose of any or all of the aforesaid bonds hereby authorized to be issued, at par, or at any price greater or less than par, and for such sum or sums as they shall think proper, and the said company and its directors, officers and agents are hereby authorized and empowered to have, exercise and enjoy all the rights, privileges and powers herein conferred upon them, respectively.

To pay for lands taken.

SECTION 17. The company hereby created shall for all and every the lands and property which it shall appropriate, take, possess, occupy or use, pay the full and actual cash value thereof at the time it shall appropriate, take, occupy, possess or use such lands and property, and such value shall be ascertained, fixed and determined by mutual agreement between the said company and the owners of such land and property, respectively, or by and through the medium and appraisement and determination or award of commissioners appointed as herein provided.

What deemed a taking of lands.

And the locating of the line of railroad of said company, or such part thereof as may be in parcels from time to time located by resolution adopted by the board of directors of said company, is hereby declared to be an appropriation, occupancy, taking, possessing or using said lands and property by said company, as authorized in this act, along, adjacent, opposite and including the line, or so much of the line of said railroad so as aforesaid located or adopted, for the purpose of fixing a time at which the value of said land and the property shall be fixed, estimated, determined and paid by said company.

Appointment of commissioners to appraise damages.

SECTION 18. It shall be lawful for and it is hereby made the duty of the judges of the circuit court in each judicial circuit, respectively, through which the line of the railroad or roads of the company hereby created shall be located, each of said judges in and for his own circuit, on the application of said company and at its cost and charge, to appoint as appraising commissioners under this act, three disinterested persons of sound mind, known integrity and approved judgment, and actual residents of the circuit of such judge. After such commissioners shall have been appointed as aforesaid, others may and shall from time to time be appointed

Vacancies.

by the same officers who made the first appointment, as need or occasion may require, in either of the following cases:

1st. When any one of the persons therefore appointed shall cease to be a resident of the circuit for which he was appointed.

2d. When such person shall decline to act, or to further act, as commissioner.

3d. When such person shall neglect or fail to act as such commissioner for the space of eight days after being requested to do so by the chief engineer or attorney of said company.

4th. When such person shall resign his said appointment.

5th. When such person shall die or be imprisoned, become insane, or shall from other cause become incapacitated or unable to, in proper manner, discharge the duties imposed by this act upon such appointee.

Notice of application.

Before any such appointment as aforesaid shall be made, said company shall give notice to all whom it may concern, that an application by said company will be made at a time, place, and before a circuit judge in such notice named, for the appointment of three appraising commissioners, as provided in this act. Such notice shall be published weekly or oftener, for three successive weeks prior to the time set for hearing such application, in one or more newspapers printed in each or so many of the counties within the circuit for which the appointment is to be made, if there be in such circuit any such newspaper printed, and if there be none, then in every such case such notice shall be so as aforesaid published for the time aforesaid, in one or more newspapers printed at the capital of the state; and the affidavit of the publisher or printer of each such newspaper of the fact of such publication, shall be sufficient legal evidence of such publication. The judge named in the notice may continue or adjourn the hearing of such application for such length of time as he shall think fit, not exceeding in the whole thirty days.

Oath.

Each person appointed, as in this section provided, before entering upon the discharge of the duties devolving upon him, shall make an oath or affirmation in writing, in substance that he will in all respects, to the best of his ability, execute the trust reposed in him, and discharge the duty imposed upon him, as in this act contained.

Commissioners to examine lands and report damages.

After said commissioners are sworn or affirmed as aforesaid, it shall be and is hereby made their duty, upon the application of said company,

or of any land-owner in this section mentioned, to view and examine all and every the lands and property which by the provisions of this act said company is authorized and empowered to appropriate, take and occupy, possess or use, by making payment therefor; and after such view and examination, said commissioners, or a majority of them, shall determine the value of all and every such lands and property, and in such determination or determinations said commissioners shall designate the sum to be paid by said company to the owners of such lands and property, respectively, in accordance with the provisions in this act contained; and when so done, the same shall be by said commissioners, or a majority of them, reported in writing, under their heads, to the circuit court of the county where such lands and property are situate. Such reports shall from time to time be made and deposited with the clerk of the circuit court of the proper county, who shall file and carefully preserve the same in his office. Such reports shall be so as aforesaid deposited within thirty days after the appraisements and determinations shall be completed in the county. In case no appeal shall be taken or made within thirty days after the depositing of any such report as aforesaid, then the clerk of such circuit court shall record the same, at the expense of said company; and said court shall enter judgment or judgments therein according to such report, on motion of said company, or on motion of any such property owner as aforesaid therein named, at any term of said court. Said commissioners shall have power under the provisions of this section, to do the things required of them in every case when the said company cannot agree with the owner or owners of such land and property as is in this section before referred to, as to the value thereof, or when, by reason of the legal incapacity, non-residence of or absence from such circuit of any such owner or owners, no such agreement can without delay be made. Said company or such owner or owners as aforesaid, may appeal from the decision of said commissioners, in each and every case, to the circuit court wherein is deposited any such report, within thirty days after the filing or depositing thereof; and the matters of fact determined by said commissioners shall be determined upon such appeal by a jury, and the jury for such purpose empanneled, shall be sworn to and shall render a true verdict, according to the evidence, of the value of the land and property in controversy between said company and the owner or owners thereof, as pro-

Appeal.

vided in this act. Upon the verdict thus rendered, the like proceeding shall be had as to setting the same aside, granting a new trial, or rendering judgment thereon, as is the practice by law in civil cases between party and party. In case the verdict of the jury shall be for a less sum than that determined upon or fixed by said commissioners, the court shall render judgment for costs against the owner or owners. If such verdict be for a sum greater than that determined upon or fixed by said commissioners, in all cases where the appeal has been taken by the claimant, the court shall render judgment against said company for the sum found by the verdict, and for the costs; and upon such judgment executions may be awarded and issue, as in ordinary cases of assumpsit.

Costs.

Notice of assessment of damages.

The aforesaid commissioners shall in no case proceed to determine or fix the value of the lands and property aforesaid, unless there has been previously thereto at least five days' notice given to such owner or owners, his or their agent or attorney, and to the attorney or agent of said company, of the time and place at which such proceedings were to be had, or unless such owner or owners is or are absent from such circuit, and having no agent or attorney known to such company or any of said commissioners residing in this state, or unless said owner or owners shall be minors, or *non compos mentis*. Such notice as aforesaid may be served upon the guardian or trustee of any minor, and upon the guardian, trustee or committee of any person *non compos mentis*, if within this state; and such service shall be valid, effectual, and shall be binding upon the owner or owners in like manner as though such minor or *non compos mentis* person were of full age and of sound mind. In all cases where notice cannot be given or served as aforesaid, said commissioners, at the expense of said company, shall cause to be published for three successive weeks prior to the time of any such hearing, in a paper printed in the county where the lands and property are situate, if any such newspaper is therein printed, and if not, then in a newspaper printed at the city of Portage, in this state, a notice to all persons who own land in such county, (naming the same), that at a time and place therein designated, said commissioners will proceed to hear the parties in interest, and determine the value of the lands and property in said county, which by making payments therefor according to the provisions of this act, said company are authorized and empowered to appropriate, take, occupy, possess or use. Upon the making and filing or

Company may use lands without awaiting result of appeal,

depositing of any such report as aforesaid, and payment into court, subject to be taken by the owner or owners aforesaid, or upon the legal tender of the amount to be paid as by said commissioners determined or fixed as aforesaid, to the owner or owners aforesaid, his or their agent, attorney, guardian, trustee, committee or legal representative, the said company, its agents, workmen, or the contractor or contractors for the making and repairing said railroad, may immediately take and use the said lands and property, without awaiting the determination of any matter to be disposed of upon any appeal made or taken as hereinbefore provided. Every person or body corporate who shall claim an interest in any such lands or property as is before in this section mentioned or referred to, whether by virtue of any tax sales, tax titles, incumbrances or lien, legal, equitable or otherwise, is hereby declared to be an owner, or part owner, of such lands and property within the meaning of the foregoing provisions of this section. In all cases when the circuit courts of this state shall have rendered judgment against said company, as in this section provided, said company may pay to the clerk of such court the amount of each such judgment, and such clerk shall in writing receipt to said company therefor, and such payment is hereby declared to be a payment unto such court, and the same shall be as good and effectual a payment as though the money were paid personally to the person or persons or party or parties entitled thereto.

Who declared owners of land.

Judgments may be paid to clerk of court.

SECTION 19. The capital stock of the company hereby created shall be two millions of dollars, which capital stock may be increased to a sum not exceeding ten millions of dollars, and said capital stock shall be and is hereby divided into shares of one hundred dollars each.

Capital stock.

SECTION 20. The company hereby created shall have no power or authority to sell or convey the road or roads to be constructed and operated [under] the provisions of this act, nor the franchises hereby granted; nor shall they have the power or authority to consolidate the stock of this corporation or company with that of any other corporation or company, except as herein and by act of the legislature of this state expressly granting such privilege.

Sale of road—consolidation.

SECTION 21. The lands granted or intended to be granted by the provisions of this act to the company hereby created, shall be and hereby are exempt from all assessments and from all taxation whatsoever, for

Exemption from taxation.

the term of ten years from the taking effect of this act, unless said company shall sooner sell or convey the same; and so much of said lands as shall be sold or conveyed by said company within said ten years, shall be subject to assessment and taxation, from time to time, as the same shall be as aforesaid sold and conveyed. And in consideration of the annual payment of a per centum (as provided in this section) by said company to this state, upon the gross earnings of said road to be built by said company as aforesaid, the railroad, its appurtenances and appendages, and all the other property, estate and effects of said company which by the provisions in this act contained, said company is authorized to acquire, purchase, hold, possess, enjoy or use for, in or about the construction, equipment, renewal, repair, maintaining or operating its railroad, as also the stock and capital of said company, shall be and hereby are forever exempt from all taxation and from all assessments. And in consideration of the grants made to and the privileges and franchises conferred upon the company hereby created, and of the exemption contained in this section, the said company shall, on or before the first day of March, in each year, pay into the treasury of this state three per centum on the gross earnings of the railroad so constructed, for the year ending on the last day of the preceding December, the first payment of such per centage to commence or be made on the first of March next after fifty miles of the railroad of said company shall be completed; and the payment of such per centum annually, as aforesaid, shall be and is in full of all taxation and assessments whatsoever as to the property in this section above exempt. And for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this state on or before the first day of February, in each year, the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company; and for the purpose of ascertaining the truth of such affidavits and the correctness of such abstracts, full power is hereby vested in the governor of this state, or any other person appointed as by law prescribed to examine the books and papers of said company, and to examine under oath the officers, agents and employees of said company and other persons; and if any person so

Three per cent. of gross earnings to be paid into state treasury.

How earnings to be ascertained.

examined by the governor or other authorized person, shall knowingly and willfully swear falsely concerning the matter aforesaid, every such person is hereby declared to have committed perjury. And for securing to the state the payment of the aforesaid per centum, it is hereby declared that the state shall have a lien upon the railroad of said company and upon all the other property, estate and effects of said company, whether real, personal or mixed, and the lien hereby secured to the state shall take and have precedence of all demands, decrees and judgments against said company. Lien.

SECTION 22. The first board of directors of the company hereby created, is hereby authorized and empowered to, and shall open books, and shall receive subscriptions to the capital stock of said company to the extent of two millions of dollars, and no more, commencing on the 8th day of August, A. D. 1866; and the same shall be done at Doty's Island, in some convenient and public room, which shall be accessible to all persons from day to day, between the hours of nine o'clock in the forenoon and four o'clock in the afternoon of each day that may as aforesaid be occupied in making subscriptions. Such subscription books shall be kept open between the hours aforesaid for four days, unless the said two millions of dollars of capital stock shall all be sooner subscribed, and at the end of said four days, the said subscription books shall be closed; or should the said two millions of dollars stock be sooner subscribed, and five per cent. thereon in money actually paid in, then in that case the books shall be closed. After said books are closed, they shall remain closed for thirty days. Opening of books of subscription

SECTION 23. All persons who shall become subscribers to the capital stock of said company, shall at the time of subscription pay in money five per cent., or five dollars upon each share subscribed; and all and every the five per cent. aforesaid, when paid in, shall remain in the treasury of said company until paid out for the use and benefit of said company in the due administration of its affairs, in the location, construction, equipment or operating its railroad in this act authorized to be constructed; and no person shall be permitted to subscribe more than two hundred and fifty shares within the first three and a half of the four days in the next preceding section mentioned. And in case there should be present within the said three and a half days, persons Five per cent. to be paid at time of subscribing. *Pro rata* apportionment of stock.

desirous of subscribing to the capital stock of said company within the aforesaid limits of two hundred and fifty shares to each person, and to sums amounting in the aggregate to more than the said two millions of dollars, then and in that case the said board of directors shall apportion said stock to the amount of two million dollars among said subscribers, *pro rata*, and according to the amount subscribed by them, respectively. All the stock subscriptions within the first three days after the opening of the books, as in the next preceding section, shall be subscribed by and for such persons as were residents of this state on the first day of January, 1866, and after which three days any person may subscribe to said stock, whether residents of this state or not. Subscriptions to said two millions of dollars of stock may be made in person or by proxy, but no person shall have power, as proxy, to subscribe for more than two persons; and the authority of every person to subscribe as the proxy of another, shall be contained in an instrument of writing, signed by the principal, and such instruments shall be preserved by the secretary of said company, as a part of its papers: *Provided*, that no stock shall be subscribed within the first three days aforesaid by or for any person who is not an actual resident within this state at the time of such subscription.

Resident and non-resident subscribers.

Subscriptions by proxy.

Number of directors necessary to act in relation to subscriptions to original stock.

SECTION 24. In all matters pertaining to the subscription of the aforesaid two millions of stock, no less number than six directors shall have power to do any act except adjourn, and a majority of those present must agree to make valid any act done by them as such directors. And as to taking the said first two millions of dollars of stock, the said first board of directors may make by-laws: *Provided*, that at least five of the directors aforesaid, over their signatures, approve of the same, and that they be not inconsistent with or repugnant to the provisions of this act. Such special by-laws shall be provided by the secretary, and the same shall ever remain a part of the records of said company.

Directors may take stock.

SECTION 25. The members of said first board of directors shall have the same rights as other persons to subscribe to the capital stock of said company.

Certificates of stock.

SECTION 26. No certificate of stock shall ever be made out or issued to any person who has not subscribed to the capital stock of said company, as provided in this act, nor for any greater amount than has been so actually subscribed by the person to whom said stock is issued; and any and all certificates of stock in

said company issued contrary to the provisions of this section, shall be void. No certificate of stock shall be issued to any person until at least eight of the directors of said company shall have found that the same is for [the] true amount subscribed by the person named in the certificate, or his assignor, and that the same is numbered and is of the same date and for the same amount or number of shares as appears in a book of registered stock, and which book shall be kept by said company, and such registry said eight directors, at least, shall over their signatures in said book certify to be correct.

Change of venue.

SECTION 27. In all cases of appeal from the determination of the appraising commissioners, as provided in this act, a change of venue shall be allowed and rendered by the court to which such appeal shall be made, or by the judge thereof, in case any credible person shall make and file with the clerk of such court an affidavit, in which tho affiant states that he knows or really believes that the appellant or appellee cannot before the judge of such court, or before a jury of the county where such appeal shall be pending, obtain a fair trial. Such change of venue shall be to some county in this state where the cause stated in the affidavit for such change does not exist, and which will best accommodate the parties litigant and their witnesses. On the trial or hearing of cases appealed from the determination of the appraising commissioners, as in this act provided, exceptions may be taken to the decision of the court or judge, and like proceedings had to and upon final judgment rendered in such cases as in ordinary civil cases wherein an issue of fact is joined.

May purchase or consolidate with other road on line of that proposed.

SECTION 28. In case any other railroad company now organized under the provisions of any law of this state, shall have surveyed and definitely located or in part constructed a line of railroad along or upon, or nearly along or upon, the proposed line of railroad hereby authorized, the said company shall have power to make such arrangements for the purchase of or consolidation or connection with such other line of railroad, or such railroad company, as may be agreed upon by and between the said railroad companies. For the purposes of such purchase or consolidation, the company hereby created shall have power and authority to issue its stock in lieu of or in exchange for the stock of such other railroad campany: *Provided*, that no person shall be credited upon any stock so issued, with the payment of any greater sum thereon than the amount actually paid in

upon the stock in lieu of or in exchange for which such stock is issued, nor shall the amount so paid in be in any case less than five per cent. of the amount of stock so issued.

Property taken for public use.

SECTION 29. All property which the company hereby created is authorized to appropriate, take posess, hold or use, by making payment therefor, as in this act provided, is hereby declared to be taken for public use, so soon as the company shall so appropriate, take, possess, hold or use the same.

Company to maintain fences

SECTION 30. The company hereby created shall fence its railroad in parcels, as it shall from time to time operate the same, within one year from the time it shall commence the operating any and every such parcel, until the whole of said railroads are in a good, proper, substantial and workmanlike manner fenced throughout the entire extent of the lines thereof.

Application of proceeds of lands sold.

SECTION 31. The avails or proceeds of the lands hereby granted to said company shall be used exclusively for the construction of the railroad authorized by this act, and as herein directed, and for no other purpose. The said lands are by this act granted to said company, subject to all the provisions, restrictions and limitations of the act of congress granting the said lands to this state, for the purpose of aiding in the construction of certain railroads in this state, approved May 5th, 1864, so far as the same are applicable thereto.

Objects not otherwise attainable.

SECTION. 32. It is hereby declared that in the judgment of the legislature of this state, the objects of the corporation hereby created cannot be attained under general laws.

Public act, &c.

SECTION 33. This act is hereby declared to be a public act, and the same, immediately after the passage thereof, shall be printed by the state printer, and thus published shall take effect and be in full force.

APPROVED, April 6, 1866.

CHAPTER XXIV.—P. & L. Laws, 1867.

[*Published, February* 20, 1867.]

AN ACT to amend chapter 314 of the local laws of 1866, entitled "An Act to incorporate the Winnebago and Lake Superior railroad company, and to execute the trust created by section 3 of the act of congress, entitled "An Act granting lands to aid in the construction of certain railroads in the state of Wisconsin, approved May 5th, 1864."

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Sec. 12 Amended.

SECTION 1. Section 12 of chapter 314 of the local laws of 1866, entitled "an act to incorporate the Winnebago and Lake Superior railroad company, and to execute the trust created by section 3 of the act of congress entitled 'an act granting lands to aid in the construction of railroads in the state of Wisconsin,' approved May 5th, 1864," approved April 6th, 1866, is hereby amended by striking out the word "fifteen" wherever it occurs in said section, and inserting in lieu thereof the word "nine," so that it will read as amended as follows:

Board of Directors.

"Section 12. All the affairs and business of the company hereby created shall be conducted, managed and carried on by a board of nine directors, who shall be stockholders of said company, and residents of the state of Wisconsin; and the board of directors is hereby invested with power and authority to conduct, manage and carry on the affairs and business of said company, and also with such power and authority as will carry or promote the carrying into full and complete effect the meaning and intent of this act. The directors, after the first board, shall be chosen by the stockholders of the company by ballot, as follows, viz.: Three directors shall be chosen at the annual meeting of the stockholders, which shall be held on the first Wednesday in the month of May, in the year of our Lord one thousand eight hundred and sixty-eight, and thereafter annually on the first Wednesday in the month of May, in each year, three directors shall be chosen. The annual meetings of the stockholders for the election of directors shall be held at Doty's Island, in this state, unless otherwise established by the board of directors. At all meetings of the stockholders the votes of stockholders may be cast in person or by proxy duly authorized, and every stockholder shall be entitled to one vote for each and every share of stock

How to be chosen.

Meetings, election of directors, &c.

held by him; and in all elections for directors those stockholders, equal to the number of directors to be elected, having the greatest number of votes, shall be deemed and declared duly elected directors. The elections shall be conducted in such manner as shall be prescribed by the by-laws, or by resolution of the company. If for any cause an election of directors shall not be had at the time when by the provisions of this act it should be had, the same may be held at such other time as shall be fixed by the by-laws of the company, and until such election be had, the directors of the preceding year shall continue to act, and the corporation shall not forfeit or lose any of its privileges, franchises or immunities by reason of the irregularity or want of any such election. At the first meeting of the board of directors of the company hereby created they shall formally accept the trust lands granted for railroad purposes, and hereby conferred on the Winnebago and Superior railroad company, and file a notice of the acceptance of such grant in the official name of such company in the office of the secretary of state of this state, within two months after such meeting; and it shall be the further duty of said company to proceed without delay to locate the line of their road from Doty's Island by the way of Stevens Point, to Bayfield, and from thence to Superior; and within two years from the acceptance of this grant, the line of the road shall be definitely located, and an official map thereof filed in the office of the secretary of state, at Madison."

Acceptance of trust lands.

Definite location of road, and filing of map.

Sec. 14 Amended.

SECTION 2. Section 14 of the said act mentioned in the first section of this act is hereby amended, by striking out the word "fifteen," wherever it occurs in said section, and inserting in lieu thereof the word "nine," and by striking out the word "five," wherever it occurs in said section, and inserting in lieu thereof the word "three," so that it will read so amended, as follows:

First board of directors—their terms of office.

"Section 14. The first board of directors of said company shall consist of the nine persons first named as corporators in the first section of this act. At the first meeting of the board of directors aforesaid, they shall first choose the president of said company, and a secretary, after which they shall ballot for their respective terms of office as directors, as follows: the president shall cause to be prepared nine pieces of paper, of as nearly the same size as may be, upon three of which shall be written 'term of one year,' and upon three more shall be written 'term of two years,' and upon the remaining

three shall be written 'term of three years.' The said pieces of paper shall be then folded as nearly alike as conveniently can be done, after which the same shall be put into a box and well shaken. Each of the said directors, or in case of the absence of any director, the secretary in his name, shall then draw from the said box one of the said pieces of paper, and the secretary shall make a record of the said drawing, noting the term by each director drawn; and those who shall draw the ballots having thereon the words 'term for one year,' shall hold their offices as directors until the first Wednesday in the month of May, in the year of our Lord 1869, and until their successors are duly elected. Those who shall draw the ballots having thereon the words 'term of two years,' shall hold their offices as directors until the first Wednesday in the month of May, in the next succeeding the year last aforesaid. Those who shall draw the ballots having thereon the words 'term of three years,' shall hold their offices as directors until the first Wednesday in the month of May, in the year of our Lord 1871, and until their successors are duly elected."

Sec. 24 amended.

SECTION 3. Section 24 of the act mentioned in the first section of this act is hereby amended, by striking out the word "ten," wherever it occurs in said section, and inserting in lieu thereof the word "five," so that it will read as follows: "Section 24. In all matters pertaining to the subscription of the aforesaid two millions of stock, no less number than five directors shall have power to do any act, except adjourn, and a majority of those present must agree to make valid any act done by them as such directors. And as to taking the said first two millions of dollars of stock, the said first board of directors may make by-laws: *Provided*, that at least five of the directors aforesaid, over their signatures, approve of the same, and that they be not inconsistent with or repugnant to the provisions of this act. Such special by-laws shall be provided by the secretary, and the same shall ever remain a part of the records of said company."

Number of directors necessary to act in relation to subscriptions to original stock.

Sec. 26 amended.

SECTION 4. Section 26 of said act mentioned in the first section of this act is hereby amended, by striking out the word "eight," wherever it occurs in said section, and inserting in lieu thereof the word "five," so that it will read as follows: "Section 26. No certificate of stock shall ever be made out or issued to any person who has not subscribed to the capital stock of said company, as provided in this act, nor for any greater amount than

Certificates of stock.

has been so actually subscribed by the person to whom said stock is issued; and any and all certificates of stock in said company issued contrary to the provisions of this section, shall be void. No certificate of stock shall be issued to any person until at least five of the directors of said company shall have found that the same is for the true amount subscribed by the person named in the certificate, or his assignor, and that the same is numbered and is of the same date and for the same amount or number of shares as appears in a book of registered stock, and which book shall be kept by said company, and such registry said five directors, at least, shall over their signature in said book certify to be correct."

Acts declared valid.

SECTION 5. The meeting of a majority of the persons named in the first section of the said act mentioned in the first section of this act, held at Doty's Island on the 19th day of July, 1866, is hereby declared to have been regular, and the acts and proceedings done and had at said meeting are hereby declared to be valid and binding in law.

SECTION 6. This act shall take effect and be in force from and after its passage.

APPROVED, February 15, 1867.

CHAPTER CCLVII.—P. & L. LAWS, 1869.

[*Published, April* 29, 1869.]

AN ACT to authorize the Portage and Lake Superior railroad company to consolidate with the Winnebago and Lake Superior railroad company, under the name of the Portage, Winnebago and Superior railroad company.

The people of the state of Wisconsin, represented in senate and assembly, to enact as follows:

May consolidate railroad companies.

SECTION 1. The Portage and Lake Superior railroad company and the Winnebago and Lake Superior railroad company are hereby authorized to consolidate as one company, to be known as the "Portage, Winnebago and Superior railroad company;" upon the terms and conditions contained in articles of consolidation to be duly executed by the president of each company, and assented to by a majority of the directors of each of said companies, and filed in the office of the secretary of state, or

by a majority of the directors of each of said companies; and on filing such articles of consolidation duly signed by a majority of the directors of each of said companies or by the said presidents, assented to by the directors as aforesaid, in the office of the secretary of state, said companies shall be deemed to be consolidated under the name aforesaid, and said company shall therefrom become and be a corporation, with all the rights, powers, privileges, grants and franchises which were of and pertaining to the Portage and Lake Superior railroad company, and the Winnebago and Lake Superior railroad company, under the provisions of their respective acts of incorporations: *Provided*, that said consolidated company shall faithfully apply the lands or the funds arising from the sale thereof, granted by congress, in aid of the construction of the railroads authorized by the charter of the companies hereby authorized to consolidate, to the building of both of said roads, in the manner as provided in the charters of said companies.

SECTION 2. This act is declared a public act, and shall take effect upon its passage and publication.

APPROVED, March 6, 1869.

ARTICLES OF CONSOLIDATION

OF THE

Portage and Superior Railroad Company, and the Winnebago and Lake Superior Railroad Company.

These articles of consolidation made and entered into this first day of May, A. D. 1869, by and between the Portage and Superior railroad company and the Winnebago and Superior railroad company, duly incorporated and organized by and under the laws of the state of Wisconsin, witnesseth as follows: May 1st, 1869.

That the said railroad companies have agreed and do hereby agree to become consolidated and do and have hereby become consolidated in and as one company, under the name of the "Portage, Winnebago and Superior railroad company," as authorized by their respective acts of incorporation, and especially by chapter two hundred and fifty-seven of the private and local laws of 1869, entitled "an act to authorize the Portage and Superior To form Portage, Winnebago & Superior.

railroad company to consolidate with the Winnebago and lake Superior railroad company," under the name of the "PORTAGE, WINNEBAGO AND SUPERIOR RAILROAD COMPANY," upon the terms, conditions and limitations following, to wit:

Nine directors.

First. That the said consolidated company shall be under the direction and control of a board of nine directors, and that the first board of directors shall be composed of the following named persons, who may hold their offices for the term of four years and until others are chosen and qualified, to-wit: Benjamin F. Hopkins, John P. McGregor, Henry Hewitt, George Reed, Henry P. Strong, W. G. Gumaer, Charles N. Paine, Reuben M. Scott, J. S. Buck, and said persons shall each enter into a good and sufficient bond in the sum of three thousand dollars with one or more sureties, to be approved by the judge of the circuit or county court of his circuit or county, conditioned that he shall well and faithfully discharge his duty as director, and pay, do and perform all that may be required of him to carry into effect the following conditions, to-wit:

Who.

How to qualify.

Duties of.

To survey and locate road.

First. To employ a competent engineer or engineers and all necessary aids, and cause to be run and marked a preliminary line of the railroad from Portage City to Lake Superior and Superior City on Lake Superior, and have the lands granted by congress in aid of said road reserved from sale by the general government within one and one half year from the date hereof, and within two and one half years have the route or line of said road properly surveyed and located, and the said lands designated upon a map or maps with their estimated valuations and set apart by the government, and have estimates made by such competent engineer or engineers of the cost of the grading and tieing the track of said road in divisions of twenty miles each from the said Portage City to Superior City.

To make estimate of cost of each 20 miles.

Mortgage of lands to trustee

Second. To have a mortgage upon the lands so selected, made and executed in due and proper form by said company to a suitable trustee, to secure the payment of the land-bonds of the said company, issued in an amount not less than at the rate of one and 50-100, nor more than four dollars per acre of said lands, which bonds are to be set apart and used in aid of the construction of the several divisions of said road in the manner, but except as is hereinafter provided and excepted.

Not to exceed $4 per acre.

First mortgage on line of road.

Third. To place a first mortgage upon the whole line of said located road to secure the payment of the bonds of said

company, issued to run not less than twenty years, in a sum or amount which shall be not less than at the rate of fifteen thousand dollars per mile of road, which bonds are to be set apart and used in aid of the construction of said road in the manner hereinafter provided.

20 years, and not less than $15,000 per mile

Fourth. To divide the said road into divisions of twenty miles each, commencing at and numbering said divisions consecutively from said Portage city to Ripon and Fond du Lac, and from Ripon to Lake Superior and Superior City, and deposit in some safe bank or banks not less than the seven-eighths of the aforementioned land mortgage bond to the credit of the said several divisions of road in *pro rata* amounts upon the estimated cost of preparing the track thereof ready for the iron, and to be paid over to the parties so constructing such track when completed, and shall reserve one-eighth of said bonds to be used for the general purposes of the company.

To divide line into sections of 20 miles, and number same.

Seven-eighths of bonds to be deposited for building road.

One-eighth for general purposes of company.

Fifth. To deposit to the credit of the said several divisions of road the said first mortgage bonds in the amount of fifteen thousand dollars per mile, which bonds are to contain a condition that the same are to be used, negotiated or sold only in and for the purchase of the iron and equipments for such divisions of road as the same shall respectively be made ready therefor, such divisions being chargeable with their respective shares of the cost of the equipment used on the line of completed road, as the same shall come to be so used upon the said divisions severally.

Mortgage bonds to be deposited to credit of each section.

Sixth. To issue stock in amount not exceeding the rate of fifteen thousand dollars per mile of road, and deposit two-thirds of the same to the credit of the said several divisions of road in *pro rata* amounts upon the estimated cost of the said several divisions, subject to be paid over to the parties constructing said divisions of road as the work shall progress thereon, and use the remainder of such stock for the general purposes of the said company.

To issue stock not exceeding $15,000 per mile

Two-thirds thereof to be deposited for constructing road.

One third for general purposes of Company.

Second. When any one of said divisions of road shall be completed the lands which may be patented to the company, in consideration thereof shall be advertised and sold to the highest bidder therefor; when directed by the parties holding a majority of the said land mortgage bonds, as aforesaid deposited to the credit and paid over on the completion of said division of road, and so much of the proceeds as shall arise from such sale, as shall be necessary shall be used in paying the principal and interest of said bonds, and the excess, if any, shall be invested in United States bonds, which are to be de-

Patented lands—how to be advertised and sold.

How money arising from sale to be used.

posited in the bank designated as the depository of the said company's securities, and the proceeds thereof to be used only for the purpose of paying the amounts due or outstanding or which may become outstanding bonds, and issued on account of other divisions of completed road, or held on deposit to be issued when other divisions of road may be completed. *Provided, however*, if the said company shall as it is hereby authorized to do, contract for the sale of the said lands or any portion thereof subject to the said mortgage, the price to be payable as the title thereto shall from time to time be given to the purchaser or purchasers; then and in such case the moneys received therefor shall be paid or invested and deposited in liquidating the said bonds in the manner aforesaid; and the foregoing conditions shall be incorporated in the said bonds and mortgages; *and provided, further*, that all municipal or other aid granted to said company in aid of the construction of its road shall be applied to the divisions severally for which such aid was specifically granted; *and provided, further*, that if a contract or contracts shall be made by said company, for the sale of the whole or any portion of the said lands to be paid for when or before the title thereto can be given to the purchaser or purchasers, and the same shall be assented to by a majority of two-thirds of the directors of the said company, then and in such case the above-mentioned mortgage shall not be made upon said lands, or said land bonds, issued.

How if land sold subject to mortgage.

How municipal aid applied.

In what case lands not to be mortgaged.

Third. That the said directors may subscribe for, take, receive and hold respectively shares of stock or land mortgage bonds at the market value thereof, in or issued by said company or lands of the company at the appraised value thereof, if the same be not mortgaged as herein provided, or portions and amounts of each, sufficient in amount to reimburse the expenditures made by them in carrying into effect the conditions hereof, excepting the amounts that may be paid them out of the fund credited to the several divisions of road as hereinafter provided; the amounts of such shares of stock, or of bonds or lands so to be taken and held, to be determined and certified by the trustee or trustees of said company.

Directors may take stock, bonds and lands to certain amount.

Fourth. The cost of procuring and depositing of the aforementioned bonds and stock shall be chargeable to and paid out of the fund belonging to the said several

How cost of procuring stock and bonds to be paid.

divisions of road, to the credit of which, such bonds and stock may be deposited.

How vacancy in board of directors to be filled.

Fifth. In case any one of the persons herein named as first directors of said consolidated company, shall refuse to act as such director, or shall fail to comply with any of the conditions or obligations herein contained or imposed, such neglect or failure for thirty days after notice as prescribed by the board of directors, shall be taken and deemed as a resignation of his said office, and the same shall be declared vacant and be filled by the appointment by a majority of the directors who have performed the conditions up to that time required of them.

New company to have and keep all books, documents, &c.

Sixth. The stock subscription books and all memorandums or contracts for subscriptions for any shares of the capital stock in either of said companies hereby consolidated, and all books and papers relating to the organization or business of the said companies in the possession or custody of any officer or officers, or agent or attorney of either of said companies shall, on demand, be delivered up to the proper officer or officers of the said company hereby and hereunder organized, and it shall and hereby is made the duty of the directors of said company to open books and receive subscriptions to the capital stock thereof, as they are or may by law be authorized to do, and to transfer to such books all subscriptions heretofore made to the capital stock in either of said companies, and to recall, receive and cancel all stock certificates which may have been issued upon any such subscription, and in exchange therefor, or in lieu thereof, issue and deliver shares of stock in equal amount in said consolidated company, and also to settle and adjust on a fair and equal basis all claims by the directors or officers or other persons against either of said companies.

To settle and adjust claims of officers, directors, or other persons.

First meeting of board, and election officers.

Seventh. The first meeting of the directors hereinbefore named shall be held in the city of Oshkosh, on the 2d day of June, 1869, for the purpose of electing officers of said consolidated company, and transacting such further business as they or a majority of them may deem necessary to carry into effect the provisions of these articles, and in case there be less than a majority present on said day, the directors may adjourn from day to day until a majority shall meet; or may adjourn the meeting for a longer time and shall publish a notice thereof in all the daily papers published in said city of Oshkosh.

Directors—how elected and term of office.

Eighth. At the expiration of the term of the said first board of directors there shall be elected by the stockholders of said company, nine directors, three of whom shall hold their offices for one year, three for two years and three for three years; and annually thereafter there shall be elected three directors to fill the places of the outgoing directors; and it is hereby made the duty of the said first board of directors at least sixty days before the expiration of their term of office to cause to be published in three several cities or villages in the state, a notice of the time and place when and where the meeting of stockholders is to be held for the purpose of electing the directors as aforesaid. All vacancies in the board of directors may be filled by the majority of the directors there remaining in the said board.

When these articles to take effect.

Lastly. These articles shall take effect and be in force from and after the same have been subscribed by a majority of the directors of each of said companies and filed in the office of the secretary of state as provided by the aforementioned act of the legislature of 1869, and the two said companies shall from thence become consolidated as one company under the name aforesaid.

How may be changed.

and these articles may be enlarged or changed by a vote of two-thirds of the directors at any general or special meeting of which all have had notice as may be deemed necessary to promote the interests of the company, and carry into effect the foregoing provisions and as by law they may be authorized to do, but in no way so as to limit the obligations hereinbefore and hereby imposed upon them the said directors.

In witness whereof the said parties hereto have caused these articles to be signed by a majority of the directors of each of said companies and sealed with their respective seals the day and year first above written:

In presence of
MARY ESTERLY. GEO. ESTERLY, [L. S.]
Director in the Portage & Superior R. R. Co.

Z. MARTIN. HENRY P. STRONG, [L. S.]
Director in the Portage & Superior R. R. Co.

S. W. BUDLONG, [L. S.]
Director in the Portage & Superior R. R. Co.

W. W. REED, [L. S.]
Director in the Portage & Superior R. R. Co.

M. B. GIBSON. H. L. WINSOR, [L. S.]
Director in the Portage & Superior R. R. Co.

WM. IRISH.	S. O. RAYMOND, [L. S.]
	Director in the Portage & Superior R. R. Co.
FRED. B. TUBBLE.	JOHN P. McGREGOR, [L. S.]
	Director in the P. & S. R. R. Co., and Pres't thereof.
JAS. K. PROUDFIT.	W. W. CORNING, [L. S.]
	Director in the Portage & Superior R. R. Co
A. J. TURNER.	WM. H. DOE, [L. S.]
	Director in the Portage & Superior R. R. Co
H. W. CHYNOWETH.	E. W. KEYES, [L. S.]
	Director in the Portage & Superior R. R. Co.
S. S. ROBY.	GEORGE REED, [L. S.]
	J. L. BUCK, [L. S.]
JOHN FORDYCE.	CURTIS REED, [L. S.]
C. L. ANDREWS.	WM. G. GUMAIR, [L. S.]
	FRED S. ELLIS, [L. S.]
	Directors of the Winnebago and Lake Superior R. R. Co.

Filed and recorded in the office of the secretary of state of the state of Wisconsin on the 24th day of May, 1869.

CHAPTER CCXLVI.—P. & L. LAWS, 1870.

[*Published April* 6, 1870.]

AN ACT to authorize the Portage, Winnebago and Superior Railroad Company to construct a branch road from its main line at or near the Penokie iron range to Ontonagon, and to unite with other railroad companies having common or connecting lines of road.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. The Portage, Winnebago and Superior Railroad Company is hereby authorized and empowered to survey, locate, construct and operate a branch railroad from its main line of road at or near the Penokie, iron range, in the county of Ashland, to the Montreal river and thence, with the assent of the legislature of the state of Michigan, to Ontonagon on Lake Superior; and in surveying, locating, constructing, operating and maintaining said branch railroad, said

May locate branch road.

Rights and powers.

company shall have all the rights, powers and privileges, and be subject to all the limitations and restrictions conferred or imposed upon said company by its acts of incorporation as herein extended or limited, to wit: chapter 314, of the private and local laws of 1866, entitled "an act to incorporate the Winnebago and Lake Superior Railroad Company, and to execute the trust created by section 3 of the act of congress, entitled an act granting lands to aid in the construction of certain railroads in the state of Wisconsin," approved May 5, 1864, and chapter 362 of the private and local laws of 1866, entitled "an act to incorporate the Portage and Superior Railroad Company, and to execute the trust created by an act of congress entitled an act granting lands to aid in the construction of certain railroads in the state of Wisconsin," approved May 5, 1864, and in pursuance of the provisions of law and under articles duly executed by the respective companies and filed in the office of the secretary of state on the 24th day of May, 1869, consolidated in the said Portage, Winnebago and Superior Railroad Company: *Provided*, that none of the lands conferred upon said company under the act of congress aforesaid, or the proceeds arising from the sale thereof shall be applied to the construction of said branch railroad.

May consolidate with other companies.

SECTION 2. In case any other railroad company shall have partially surveyed or located or constructed or in part constructed, a line of railroad along or upon or nearly along or upon any portion of the proposed or located lines of road of said railroad company, the said company shall have power to make such arrangements for the purchase of or connection or consolidation with such other line of railroad, or such railroad company, as may be agreed upon by and between the said railroad companies; and the said company shall have power to consolidate with other railroad companies, which by law may be authorized to construct connecting lines of road and make such consolidation; and for the purpose aforesaid said company may issue its capital stock in an amount that shall not exceed the rate of forty thousand dollars per mile of railroad constructed or acquired by said company.

SECTION 3. This act is hereby declared to be a public act, and shall be published as such, and shall take effect from and after its passage.

Approved March 10, 1870.

CHAPTER CCXLVII.—P. & L. Laws, 1870.

[*Published March* 16, 1870.]

AN ACT to authorize the common council of the city of Portage to levy a tax in aid of the survey and location of the Portage, Winnebago and Superior railroad.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

May levy tax.

SECTION 1. The common council of the city of Portage, in the county of Columbia, is hereby authorized to levy or cause to be levied on all the taxable property in said city, a tax not exceeding the sum of three thousand dollars, for the purpose of aiding in the survey and location of the Portage, Winnebago and Superior railroad, and in procuring the right of way therefor in and through said city and county. Said tax shall be levied, assessed and collected in the same manner as other taxes are levied, assessed and collected in said city, and the same when so collected shall for the purposes aforesaid, be paid out by or under the direction of such persons as shall be appointed by said council, and in the manner agreed upon by and between such person and the president of said railroad company, and in exchange for an equal amount in the capital stock of said company.

Shall issue orders.

SECTION 2. Whenever the said tax has been levied and said company has entered into proper contract to deliver to said city when the same can be done, shares of its capital stocks in amount equal to said tax, and in consideration of the expenditure thereof as aforesaid, the proper officers of the said city shall issue in the usual form and deliver to the person so appointed by said council, their orders upon the treasurer of said city to the amount of such tax, and such order or the proceeds thereof, or so much thereof as may be necessary shall be used and disbursed by such person for the purposes and in the manner provided in the preceding section.

May apply money.

SECTION 3. The said common council is further authorized in anticipation of the levying and collecting of the tax aforesaid, to apply any money in the treasury not otherwise appropriated to the purpose contemplated by this act.

SECTION 4. This act shall take effect and be in force from and after its passage.

Approved March 10, 1870.

CHAPTER CCCLXIX.—P. & L. Laws, 1870.

AN ACT to incorporate the Portage, Stevens Point and Superio Railroad Company.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Corporators.

SECTION 1. W. W. Corning, S. A. Pease, A. J. Turner, Robert Cochran, J. O. Raymond, Seth Reeves, George A. Neeves, Joseph Wood and G. L. Park and their associates and successors are hereby constituted and declared to be a body corporate and politic, by the name and style of the Portage, Stevens Point and Superior Railroad Company, and by and under said corporate name and style shall have perpetual succession, and shall have and enjoy all and singular the rights, powers, authority, privileges, franchises and immunities by and in this act expressly conferred, and all other such rights, powers, authority, privileges, franchises and immunities as are necessary and proper to the full and complete possession, exercise and enjoyment of those hereby expressly conferred; and the said corporation may make, have and use a common seal, and may alter, break and renew the same at pleasure; and by the corporate name aforesaid may sue and be sued, plead and be impleaded, defend and be defended, contract and be contracted with, take and hold estate, real, personal or mixed, by gift, purchase, demise or lease, and sell, lease and convey the same, and generally do and perform all acts and things which any corporation may lawfully do and perform.

Name and powers.

May locate and construct railroad.

SECTION 2. The corporation created by this act is hereby authorized and empowered to survey, locate and construct, and perpetually to have, use and enjoy, maintain and operate a railroad, with one or more tracks or lines, over such route as they may select from Portage City, in Columbia county, to Stevens Point, in Portage county, to connect with the Portage, Winnebago and Superior Railroad, at such point as may be agreed upon between the companies owning said roads.

May transport freight and passengers.

SECTION 3. The company hereby created shall have the perpetual right, power and authority to transport, take and carry property and persons upon their said railroad by the power and force of steam or animals or any mechanical or other power, or any combination of them, and to receive and store any property in any of its depots or other buildings; and to make, construct, maintain and use all such switches, turnouts, side

tracks and connecting tracks as it shall deem necessary, and also to conduct, erect, maintain and use all such depots, station-houses, warehouses, car houses and shops, engine houses and all other buildings, fixtures and things useful for the accommodation of said company and its roads, and those using the same; to purchase or manufacture and own rails, chairs, spikes, engines, cars, tenders and all other things necessary or useful for the construction or operation of a railroad, and to sell the same. And it shall also have the power and authority to operate its said road in connection with any and all other railroads which may cross, come up to or connect with said road, upon such terms as shall be mutually agreed upon by and between the said companies; and if any line of railroad shall have been surveyed and located, or in part constructed, along or upon or nearly along or upon any part of the proposed line of railroad hereby authorized, the said company shall have power, and are hereby authorized, to make such arrangements for the purchase of or consolidation or connection with such other line of railroad, as may be agreed upon by and between said company and the owner or owners of such other line of railroad so surveyed, located or partially constructed.

May construct road along or across other roads.

SECTION 4. The company hereby created shall also have the right, power and authority to construct its railroad upon and along, across, under or over any public highway, or any private way or road, street, plankroad, or railroad, if the same shall be necessary; but the said company shall restore such highway, private way or road, street, plankroad or railroad to its former state or condition, so as not to impair the usefulness of the same, so far as the same can be done consistently with the rights and privileges hereby granted to the company hereby created. Said company shall have the further right, power and authority to erect, maintain and use all the necessary bridges for the use of its railroad over any streams of water or water courses, at such point or points of crossing the same as they may locate the said railroad, with all necessary abutments, piers or other structures or foundations: *Provided*, that such bridges shall not obstruct the navigation of any river or navigable streams over which the same shall be built.

May enter upon lands.

SECTION 5. It shall be lawful for the company hereby created, and it shall have the right, power and authority, by its officers, engineers, agents, servants and workmen, to enter upon any land for the purpose

CHAPTER CCCLXIX.—P. & L. Laws, 1870.

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Name and powers.

May locate and construct railroad.

SECTION 2. The corporation created by this act is hereby authorized and empowered to survey, locate and construct, and perpetually to have, use and enjoy, maintain and operate a railroad, with one or more tracks or lines, over such route as they may select from Portage City, in Columbia county, to Stevens Point, in Portage county, to connect with the Portage, Winnebago and Superior Railroad, at such point as may be agreed upon between the companies owning said roads.

May transport freight and passengers.

SECTION 3. The company hereby created shall have the perpetual right, power and authority to transport, take and carry property and persons upon their said railroad by the power and force of steam or animals or any mechanical or other power, or any combination of them, and to receive and store any property in any of its depots or other buildings; and to make, construct, maintain and use all such switches, turnouts, side

tracks and connecting tracks as it shall deem necessary, and also to conduct, erect, maintain and use all such depots, station-houses, warehouses, car houses and shops, engine houses and all other buildings, fixtures and things useful for the accommodation of said company and its roads, and those using the same; to purchase or manufacture and own rails, chairs, spikes, engines, cars, tenders and all other things necessary or useful for the construction or operation of a railroad, and to sell the same. And it shall also have the power and authority to operate its said road in connection with any and all other railroads which may cross, come up to or connect with said road, upon such terms as shall be mutually agreed upon by and between the said companies; and if any line of railroad shall have been surveyed and located, or in part constructed, along or upon or nearly along or upon any part of the proposed line of railroad hereby authorized, the said company shall have power, and are hereby authorized, to make such arrangements for the purchase of or consolidation or connection with such other line of railroad, as may be agreed upon by and between said company and the owner or owners of such other line of railroad so surveyed, located or partially constructed.

May construct road along or across other roads.

SECTION 4. The company hereby created shall also have the right, power and authority to construct its railroad upon and along, across, under or over any public highway, or any private way or road, street, plankroad, or railroad, if the same shall be necessary; but the said company shall restore such highway, private way or road, street, plankroad or railroad to its former state or condition, so as not to impair the usefulness of the same, so far as the same can be done consistently with the rights and privileges hereby granted to the company hereby created. Said company shall have the further right, power and authority to erect, maintain and use all the necessary bridges for the use of its railroad over any streams of water or water courses, at such point or points of crossing the same as they may locate the said railroad, with all necessary abutments, piers or other structures or foundations: *Provided*, that such bridges shall not obstruct the navigation of any river or navigable streams over which the same shall be built.

May enter upon lands.

SECTION 5. It shall be lawful for the company hereby created, and it shall have the right, power and authority, by its officers, engineers, agents, servants and workmen, to enter upon any land for the purpose

of exploring, surveying, locating and determining the route of said railroad; and when the said route or any portion thereof shall be determined by resolution adopted by its board of directors, it shall be lawful for the aforesaid company, and it shall have the right, power and authority by its officers, engineers, agents, contractors, surveyors, servants and workmen, at any time to enter upon, take, possess, occupy and use any land along and including the line of said route, not exceeding two hundred feet in width. It shall also be lawful for said company, and it shall have the right, power and authority, at any time to enter upon, take possess and occupy and use any other lands beyond said limits of two hundred feet, which the directors shall by resolution adopted by them, (a copy of which shall be recorded at the expense of said company in the office of the register of deeds in the county in which such lands are located), declare to be necessary for the use of said company, for the purpose of erecting depot buildings, station houses, machine shops, freight houses, warehouses, engine houses, or buildings or fixtures of any kind, or ground about the same for the convenient operation of the road, or for making drains, or giving a proper direction to water-courses, or of directing or changing the channel of water-courses, or for the purpose of removing such substances and things as may endanger, obstruct or interfere with the free use of the said road, or for the purpose of depositing earth, gravel or stone, or for the purpose of obtaining earth, gravel or stone, timber or other materials for embankments, structures or superstructures necessary to the construction, repair or renewal of said roads. Said company shall however, at such time and in such manner as is provided by and in this act, be liable to pay the full value of all earth, gravel, stone, timber and land which may be so as aforesaid taken, possessed, occupied and used for any of the purposes aforesaid, which is the private property of either persons or corporations, which value (unless the owner thereof and said company shall agree as to the same) shall be ascertained and determined in the manner hereinafter provided; and whenever the same shall have been paid, tendered or deposited as provided in this act, an estate in and to all and every such lands in fee simple, absolute forever, shall be and become vested in said company by virtue thereof, and of the provisions of this act, and by the same means a complete title shall vest in said company

in and to all such earth, gravel, stone and timber; and whenever said company shall deem that the same or any part or portion of the aforenamed property shall no longer be necessary for the purposes for which the same were taken, it is hereby authorized and empowered, by deed or other instrument in writing, to lease or sell the same or any part thereof.

Property taken for public use.

SECTION 6. All property which the company hereby created is authorized to appropriate, take, possess, hold or use, by making payment therefor as is in this act provided, is hereby declared to be taken for public use, as soon as the company shall so appropriate, take, possess, hold or use the same.

May fix rates of transportation.

SECTION 7. On the completion of said road or any part thereof, it shall be lawful for said company, and it is hereby authorized and empowered to demand and receive such sum or sums of money for the transportation of persons and property as it shall from time to time deem reasonable.

May transport in boats, &c.

SECTION 8. Said company hereby created shall also have full power and authority to transport persons and property in boats, vessels, barges and other water crafts on any of the navigable waters which its said railroads or road may run or connect with, and to receive and collect reasonable compensation for the same, and for that purpose may build or purchase, own and use such boats, vessels, barges and other water-crafts as it may require.

Board of directors—their election and classification.

SECTION 9. All the affairs and business of the company hereby created shall be conducted, managed and carried on by a board of directors, who shall be stockholders of said company; and the board of directors is hereby invested with power and authority to conduct, manage and carry on the affairs and business of said company, and also with such powers and authority as will carry or promote the carrying into full and complete effect the meaning and intent of this act. The first board of directors of said company shall consist of the six persons named as corporators in the first section of this act, and at the first meeting of the board of directors aforesaid, they shall first choose the president of said company and a secretary, after which they shall ballot for their respective terms of office as directors, as follows: The president shall cause to be prepared six pieces of paper, as nearly of the same size as may be, upon two of which shall be written, "term of one year," and upon two more shall be written, "term of two years," and upon the remaining two shall be written, "term of three years."

The said pieces of paper shall be then folded as nearly alike as conveniently can be done, after which the same shall be put into a box and well shaken. Each of the said directors, or in case of the absence of any director, the secretary in his name shall then draw from the said box one of the said pieces of paper, and the secretary shall make a record of the said drawing, noting the term by each director drawn; and the said directors shall hold their offices as directors for the term indicated by the ballots drawn by them respectively, and until their successors shall be duly elected; and two directors shall be elected by ballot at each annual meeting of the stockholders of said company, who shall hold their offices as directors for three years and until their successors are elected: *Provided*, that any vacancy in the board of directors caused by death, resignation or otherwise, may be filled by election at any regular annual meeting of the stockholders of said company, and the person or persons so elected shall hold for the unexpired term for which he or they shall be elected.

Their officers and duties.

SECTION 10. A majority of said board of directors shall constitute a quorum for the transaction of business. They shall meet at such times and places, and shall be convened in such manner as they shall decide upon. They shall select a president and vice-president from the board of directors, who shall serve for one year, or until their successors are elected. The board of directors shall also appoint such other officers, superintendents, engineers and agents as they may deem necessary, and fix their compensation and duties, and shall have power to make and establish such by-laws as they may think proper respecting the property, concerns, affairs, business, stock and government of the corporation created by this act, and the powers and duties of its officers and committees; and its officers and committees may exercise all the powers which may be prescribed by such by-laws, and the directors may make such other rules, regulations and orders as they may think proper, but no such by-laws, rules, regulations or orders shall be inconsistent with this act or with the constitution or laws of this state; and the directors shall have power in general, to superintend and direct all the operations, receipts, disbursements and all other affairs of said company.

Capital stock.

SECTION 11. The capital stock of said company shall be two millions of dollars, divided into shares of one hundred dollars each; and the directors shall cause books to be opened at such times and places as they may

designate, to receive subscriptions to the capital stock of said company, under the direction of such person or persons as they may designate, giving public notice by publication at least one week in a public newspaper published at or nearest to each place where books are to be so opened for subscriptions, and shall require such sum as they may determine, not less than five dollars, to be actually paid on each share of stock subscribed at the time of subscription.

Annual meetings.

SECTION 12. The first meeting of the directors of said company shall be at such time and place as a majority of them shall agree upon in writing, and the annual meetings of the stockholders shall be held at such time as may be fixed by the by-laws of the said company in each year, at the city of Portage, at which place the records, books and offices of said company shall be kept; and at the date of each of said meetings, the term of office of two directors shall expire and their successors shall be elected: *Provided*, that the stockholders shall be duly notified of the time of the first annual meeting, which shall be held within six months after the first meeting of the directors and organization of said company.

Special meetings.

SECTION 13. Special meetings of the stockholders may be called by order of the board of directors or by the stockholders holding one-fourth of the capital stock, on twenty days' notice given to the stockholders, specifying the object of the meeting; but no business shall be transacted at any such meeting unless a majority of the stock then issued shall be represented in such meeting.

How election to be conducted.

SECTION 14. At all meetings of the stockholders, the votes of the stockholders may be cast in person or by proxy duly authorized, and every stockholder shall be entitled to one vote for each and every share of stock held by him; and in all elections for directors, those stockholders, equal to the number of directors to be elected, having the greatest number of votes, shall be deemed and declared duly elected directors. The elections shall be conducted in such manner as shall be prescribed by the by-laws or by resolution of the company. If for any cause an election of directors shall not be had at the time when by the provisions of this act it should be had, the same may be held at such other time as shall be fixed by the by-laws of the company, and until such election be had, the directors of the preceding year shall continue to act, and the corporation shall not forfeit or lose any of its privileges, franchises or immunities by reason of the irregularity or want of any such election.

May borrow money and issue bonds.

SECTION 15. The company hereby created is hereby authorized and fully empowered in its corporate capacity, to borrow any sum or sums of money from any person or persons, corporation or body politic of any kind, or for any rate of interest which may be agreed upon by and between said company and any party of whom such money may be obtained, and to make, execute and deliver, in or out of this state, all necessary writings, notes, bills, bonds, mortgages and all other papers or securities in amount or kind as may be deemed expedient by said corporation in consideration of any such loan, or in discharge of any liabilities they may incur in the construction, repair, equipment or operations of said road, or in any of the transactions of the said company authorized by this act; and the said company is hereby authorized in its corporate capacity, to make, execute, issue and deliver its bonds or obligations in such an amount as the directors shall think best for the interests of said company; and the directors of said company are hereby authorized and empowered to prescribe the sum or sums for which each of said bonds shall be issued, and the time when the same shall become due; and the contracts and official acts of said company for the purposes necessary to carry out the objects of this corporation, are hereby declared binding in law and equity upon said corporation and upon all parties to said contracts.

Shall pay full value for lands taken.

SECTION 16. The company hereby created shall for all and every the lands and property which it shall appropriate, take, possess, occupy or use, pay the full and actual cash value thereof at the time it shall appropriate, take, occupy, possess or use such lands and property, and such value shall be ascertained, fixed or determined by mutual agreement between the said company and the owners of such land and property, respectively, or by and through the medium and appraisement and determination or award of commissioners, appointed as hereinafter provided.

Proceedings for appointment of commissioners to appraise damages.

SECTION 17. It shall be lawful for and it is hereby made the duty of the judges of the circuit courts respectively of the counties through which the line of the railroad or roads of the company hereby created shall be located, each of said judges in and for his own circuit, on the application of said company, and at its cost and charge, to appoint as appraising commissioners under this act, three disinterested persons of sound mind, known integrity and approved judgment, and actual residents of the circuit of said judge. After

such commissioners shall have been appointed as aforesaid, others may and shall from time to time be appointed by the judge aforesaid, as need or occasion may require, in either of the following cases: 1st. When any one of the persons theretofore appointed, shall cease to be a resident of the circuit for which he was appointed, or shall die or become in any manner incompetent to act as such commissioner. 2d. When such person shall decline to act, or to further act as such commissioner. 3d. When such person shall neglect or fail to act, or to further act as such commissioner for two months after being thereunto properly requested. Notice of any application for the appointment of commissioners as aforesaid shall be given by publication for three successive weeks, in a public newspaper in the county of each circuit in which such application is made in which a newspaper is published, and through which the proposed route of said railroad shall run, and the affidavit of the publisher or printer shall be evidence of such publication. If the said company shall neglect to apply for and procure the appointment of commissioners as aforesaid, they shall be liable to damages as for trespass to the owner or owners of any land taken by them for the purposes of the corporation.

Commissioners shall take oath.

SECTION 18. The commissioners so appointed shall before entering upon the discharge of their duties as such commissioners, take an oath before a person competent by law to administer oaths, that they will faithfully and according to the best of their ability examine the lands so taken or required by the said company, and impartially estimate and appraise the value of the same, and the damage or injury which the owner or owners thereof shall have sustained or may sustain by reason of the taking and use thereof by the said company.

Proceedings for appraisal and award of damages.

SECTION 19. The said commissioners shall upon the request of said company, or of the owner or owners of any land taken as aforesaid, at the cost and expense of said company, proceed to examine the premises, and estimate the value of said land and the amount of damages, and they or a majority of them shall make a report in writing of such valuation under their hands and seals to the circuit court of the county where the land lies, and shall return the same within thirty days after the appraisal to the clerk of the circuit court of the county in which they reside, and it thall be the duty of the said clerk to immediately file the same. And in case no appeal shall be made within thirty

days after the filing of the said report as hereinafter provided, then the said clerk shall record the same at the expense of the said company, and judgment of the said court shall be entered thereon, on motion of either party at any term of said court: *Provided*, that either party may appeal to said court within thirty days after said report shall have been filed in the clerk's office, by service of a notice of appeal upon the opposite party and upon the clerk of the court, and such appeal shall be tried in the same manner as other issues are tried in said court; and the jury impanneled to try the same shall find the value of the lands so taken or required by said company, and the damages which the owner or owners thereof shall have sustained by the taking of the same, and the judgment of the said court shall be entered accordingly: *Provided also*, that it shall not be lawful for said commissioners or said court to proceed in the assessment of damages, or in the valuation of any lands or materials as aforesaid, in the absence of the owner or owners, his her or their agents or attorneys, unless it shall be shown to them by competent testimony that said owner or owners shall have had at least five days notice of the time and place at which such assessment or valuation was to be made, or that the said owner or owners are absent from the said state of Wisconsin, and if the said owner or owners shall be minors or *non compos mentis* or absent from the state, the service of notice may be made on the guardian or trustee if there be any, or in such manner as the court may direct: *Provided also*, that upon the making and filing of the report as aforesaid, and the payment or the legal tender of the amount of any valuation or appraisal specified therein, to the owner or owners of any such lands, his, her or their legal representatives, or payment thereof in the circuit court of the county in which such lands shall be situated, for the owner or owners thereof, the said company, their agents or the contractors for making or repairing said railroad, may immediately take and use the same without awaiting the issue of any appeal brought thereon; *and provided also*, that in case of an appeal as aforesaid by the owners of such land, the said company immediately on notice of the perfection of such appeal, shall pay into court, to abide judgment therein, the amount awarded by such commissioners; and in case of any appeal by the company, it shall be the duty of such company to execute a bond, with sufficient

surety to be approved by the court, conditioned to pay any judgment that may be rendered therein, and to abide by the order of the court in the premises. Such bond shall be filed at the time of entering the appeal, and in case of neglect or refusal, unless further time so to do shall have been granted by the court, the appeal may be dismissed on motion. Whenever any judgment shall have been entered as herein provided, for the value of any lands, or for any damages for taking and using the same, and the amount specified in such judgment shall have been paid or tendered to the owner or owners of such lands, his, her or their legal representatives, the said company shall be entitled to the estate and interest in the same, as fully as if it had been conveyed in fee simple; and if such valuation be not received when tendered, it may at any time thereafter be received, or may be collected from said company by action at law, at the cost and expense of the person or persons entitled to the same: *Provided*, that the costs of any proceedings and judgments, specified in the last preceding section shall be taxed by the court and paid by such company, except in cases when upon appeal the verdict of the jury shall be for the same or for a less sum than that reported by the said commissioners. A change of venue may be had in any case of appeal as aforesaid, as in other cases in the circuit courts of this state, and upon the trial of any such appeal, exceptions may be taken to the decision of the court or judge, an appeal taken to the supreme court, as in ordinary civil cases.

Shall fence road

SECTION 20. The company hereby created shall fence its railroad in parcels, as it shall from time to time operate the same, within one year from the time it shall commence the operating of any and every such parcel, until the whole of said railroad is in a good, proper, substantial and workmanlike manner fenced throughout the entire extent of the line thereof, excepting when the same shall run through or upon a street in any city or village.

Not to be attained by general laws.

SECTION 21. It is hereby declared that in the judgment of the legislature of this state, the objects of the corporation hereby created cannot be attained under general laws.

May consolidate.

SECTION 22. The company hereby created shall have the special right to join or consolidate the Portage, Winnebago and Superior Railroad Company, at or near Stevens Point, upon such terms and conditions as the said companies, respectively, may agree, and may con-

solidate its respective stock and franchises with the said Portage, Winnebago and Superior Railroad Company upon such terms and conditions as shall be agreed upon, by and between said companies respectively.

SECTION 23. This act shall take effect and be in force from and after its passage and publication.

Approved March 16, 1870.

ARTICLES OF CONSOLIDATION, P. S. P. & S. & P. W. & S. R. R. CO.'S.

Articles of Consolidation between the Portage, Stevens Point and Superior Railroad Company and the Portage, Winnebago and Superior Railroad Company.

These articles of consolidation made and entered into this 23d day of November, A. D. 1870, by and between the Portage, Stevens Point and Superior Railroad Company, party of the first part, and the Portage, Winnebago and Superior Railroad Company, party of the second part.

Witnesseth: That the said party of the first part, a corporation duly incorporated and organized by and under the laws of the State of Wisconsin, and as authorized by its act of incorporation by its president W. W. Corning, duly authorized and subject only to the approval of a majority of its Board of Directors, for and in consideration of the covenants and agreements herein contained, to be kept and performed by and on the part of the said party of the second part, has covenanted and agreed, and does hereby covenant and agree to assign, transfer to and consolidate with, and does hereby assign and transfer all its rights, powers, privileges, stock and franchises to and thereby become consolidated with the said party of the second part, and covenants and agrees that the said party of the second part, by and under its name aforesaid or by whatever name it may hereafter become known, and its successors and assigns shall have the right to take and may take, have, hold, exercise and enjoy all and singular the said rights, powers, privileges, stock and franchises as absolutely and completely as though directly granted to and conferred upon it by law, upon the conditions and of the covenants and agreements herein on its part to be kept and performed.

The said party of the second part, as authorized by law, by its president, Geo. Reed, thereto duly authorized, for and in consideration of the said covenants and agreements,

and of the said assignment, and transfer to it of the said rights, powers, privileges, stock and franchises, hereby covenants and agrees that said rights, powers, privileges, stock and franchises are taken and are to be held, exercised and enjoyed by it and its successors and assigns for the purpose of carrying into effect the covenants and agreements herein on its part contained, and upon the terms, conditions and limitations following, to-wit:

Portage, Winnebago & Superior accepts same.

First. That immediately after the ratification of these articles by a majority of the board of directors of the said party of the first part, the said party of the second part shall, at its own cost and charge, cause to be commenced, under the direction of competent engineers, a survey of the line of railroad, on the most direct feasible route between Portage City and Stevens Point, and have the same diligently prosecuted to completion and completed, and proper estimates of the cost of the construction of the track thereon, made by such engineers within ninety days from the time of the ratification aforesaid.

Shall survey route and make estimates of cost of in 90 days.

Second. That said party of the second part shall, as soon as practicable after the location of the said line of railroad has been made, submit to such municipal corporations on the route of said road, as authorized by law, and as it may deem advisable, propositions for aid towards the construction of said road and the procuring of the right of way and depot grounds therefor; and as soon as such right of way and depot grounds have been secured and a reasonable amount of such aid has been assured to said party of the second part, the work of construction of the track of said road shall be commenced, and the same fully completed, ready for the laying of the ties and iron rails thereon, within one year from the first day of June next; and that the iron shall be laid thereon and cars run over the same within two years from the said ratification hereof.

Shall submit propositions for aid.

Work—when to begin and when to be completed

Third. That on the failure by the said party of the second part to perform any one of the said covenants on its part herein contained, the said party of the first part shall have the right on twenty days notice and on payment to the said party of the second part, its successors or assigns, all such sums of money as shall have been reasonably expended by it or them, the said successors or assigns, in and about the construction of said track of railroad, to resume, re-take, have, hold and enjoy all and singular the said rights, powers, privileges, stock and purchases so as aforesaid and hereby transferred by it to the said party of the second part as fully and completely

Right of Portage, Stevens Point & Superior to retake road, and conditions of.

as though these articles had not been entered into by said parties.

Differences to be settled by arbitration.

Lastly. It is hereby mutually agreed by and between the parties hereto, that in the event of any disagreement arising under these articles, the same shall be settled and determined by arbitrators, one to be selected by each party, and in case the two so selected shall not be able to agree, then the two so selected shall select the third, and the decision of a majority of them shall be binding and conclusive between the said parties.

In testimony whereof the parties have caused these presents to be signed by their respective presidents and their official seals to be hereunto affixed, the day and year first above written.

In presence of
M. WADLEIGH. W. W. CORNING, [L. S.]
President P. S. P. & S. R. R. Co.

[L. S.] GEO. REED,
President P. W. & S. R. R. Co.

Directors ratification.

We, the undersigned directors in the Portage, Stevens Point and Superior Railroad Company and a majority of them hereby approve, ratify and confirm the foregoing articles of consolidation, this 3d day of December, A. D. 1870.

In presence of
M. WADLEIGH.

W. W. CORNING,
G. L. PARK,
ROBERT COCHRAN,
A. J. TURNER,
S. A. PEASE.

Ratification resolution.

Resolved, That the articles of consolidation entered into between the Portage, Stevens Point and Superior Railroad Company and the Portage, Winnebago and Superior Railroad Company by the presidents of each of said companies, respectively, bearing date November 23d, 1870, be and the same are hereby ratified by the directors of the Portage, Stevens Point and Superior Railroad Company,

Adopted, December 3d, 1870.

S. A. PEASE,
Secretary of Portage, Stevens Point and Superior Railroad Company.

Date of filing.

Filed in the office of the Secretary of the State of Wisconsin on the 5th day of December, A. D. 1870.

CHAPTER XXVII.—P. & L. Laws 1871.

[*Published February 4, 1871.*]

AN ACT to change the name of the Portage, Winnebago and Superior Railroad Company.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Name changed and powers of the corporation.

SECTION 1. The name of the Portage, Winnebago and Superior Railroad Company is hereby changed to and shall hereafter be known as the "Wisconsin Central Railroad Company," and under that name said company shall have and possess, and may use, exercise and enjoy all the rights, powers, privileges, trusts, property and franchises which by law were granted to or conferred upon or which have been acquired by the railroad companies mentioned in articles of consolidation filed in the office of secretary of state of Wisconsin, on the 24th day of May, 1869, consolidating said companies, as authorized by law, in and as one company, under the said name of the Portage, Winnebago and Superior Railroad Company, and all the rights, powers, privileges, property and franchises by law granted to or conferred upon or acquired by the railroad companies which have heretofore become consolidated with the said Portage, Winnebago and Superior Railroad Company, and which may hereafter become consolidated with the said company, under the name of the "Wisconsin Central Railroad Company."

Further powers

SECTION 2. That the said company, by and under its name of Wisconsin Central Railroad Company, may execute and have executed unto it any contracts made under its said name of Portage, Winnebago and Superior Railroad Company, with any person or persons, parties or municipal corporations for the delivery of stock, bonds or other securities, the same and with like force and effect as though its name had not been changed; and the directors of said company shall be and are hereby authorized and empowered to fill any vacancy which may at any time exist in their board. Any stockholder in said company shall be eligible to the office of director, whether his residence be in or out of this state.

SECTION 3. This act is hereby declared to be a public act, and shall be immediately published by the state printer, and take effect from and after its passage.

Approved February 4, 1871.

CHAPTER CLXII.—P. & L. Laws, 1871.

[*Published March 8th*, 1871.]

AN ACT to authorize the Portage, Winnebago and Superior Railroad Company to extend its road west from Superior.

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

Survey and location of route.

SECTION 1. That the Portage, Winnebago and Superior Railroad Company be, and the same is hereby authorized and empowered to survey, locate and construct, complete and perpetually to have, use and enjoy, maintain and operate a continuation of its main line of road from the Bay of Superior, in the county of Douglas, to the western boundary of this state, and otherwise connect its said railroad with the Northern Pacific Railroad, and the Lake Superior and Mississippi Railroad, as contemplated and provided for by section eight of an act of congress of the United States, entitled "an act making a grant of lands to the state of Minnesota, to aid in the construction of the railroad from St. Paul to Lake Superior," approved May 5, 1864: *Provided, however*, that said company shall have the authority to construct and maintain a bridge across the St. Louis river at any point at or above Conner's Point, in said county of Douglas, whenever the same shall be assented to by resolution of the board of supervisors of the town of Superior.

SECTION 2. This act is declared to be a public act, and shall be immediately published in the official state paper, and shall take effect from and after its passage.

APPROVED, March 2, 1871.

CHAPTER CCCLXIII.—P. & L. Laws, 1871.

[*Published June* 10, 1871].

AN ACT to amend chapter 162 of the private and local laws of 1871, entitled "an act to authorize the Portage, Winnebago and Superior Railroad Company to extend its road west from Superior."

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Amended.

SECTION 1. Section one of chapter 162 of the private and local laws of 1871, entitled "an act to authorize the Portage, Winnebago and Superior Railroad Company

to extend its road west from Superior," is hereby amended by striking out the words, "Portage, Winnebago and Superior," where they occur in said section, and inserting in lieu thereof the words, "Wisconsin Central," and the title of said chapter 162 is also hereby amended so as to read, "an act to authorize the Wisconsin Central Railroad Company to extend its road west from Superior."

SECTION 2. This act shall take effect and be in force from and after its pasage, and shall be published immediately in the official state paper.

APPROVED, March 20, 1871.

CHAPTER CCCXLII.—P. & L. LAWS, 1868.

[*Published April* 20, 1868.]

AN ACT to incorporate the Manitowoc and Minnesota railroad company.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. That Henry Hewitte, Curtis Reed, Richard Klingholtz, I. S. Buck and George Reed and such other persons, if any, as shall associate with them and become stockholders as hereinafter in this act provided, are hereby created, constituted, made, appointed and declared a body corporate and politic, by the name and style of the "Manitowoc and Minnesota railroad company," and said corporation by and under its aforesaid corporate name and style shall have perpetual succession, and shall have and enjoy all and singular the rights, powers, authority, privileges, franchises and immunities by and in this act expressly conferred, and all other such rights, powers, authority, privileges, franchises and immunities as are necessary and proper to the full and complete possession, exercise and enjoyment of those hereby expressly conferred. Said company may and it shall have power, to purchase, hold and own woodland for the purpose of obtaining wood to operate or fence its railroads; but such woodland shall always be subject to assessment and taxation, and shall never be considered as a part of the property hereinafter exempt from taxation and assessment. Said company may also, and it shall have power, at pleasure to sell, lease and convey such woodlands, or any portion

Corporators.

Name and Powers.

of them. Said company shall also have power to purchase, take, hold, sell, lease and convey all such estate, real, personal or mixed, other than the aforementioned woodlands, as may be necessary and proper to have, hold, use or possess for, in or about the construction or equipment, renewal, repair, maintaining or operating its railroads. Said company may also take, hold or occupy all such lands as may be given or granted to it by this state, or by the government of the United States, or both, for the purpose of aiding in the construction of any of its railroads, and after such last mentioned lands are so as above given or granted to said company, it may, subject to the terms, conditions, impositions, restrictions and limitations contained in such gift or grant, sell and convey the same, and may otherwise do with the said lands as is hereinafter provided. All other estates, property and effects which said company may purchase or acquire by gift or grant, other than that which is above in this section mentioned, shall always be subject to assessment and taxation, notwithstanding the exemptions hereinafter contained. Said company shall have power to make, have and use a common seal, and alter, break and renew the same at pleasure; and by and under its aforesaid corporate name and style, said company shall be capable of contracting and being contracted with for and as to the purposes in this contained, of suing and being sued, of pleading and being impleaded, defending and being defended, answering and being answered unto, in law or in equity, in all courts and places whatsoever, as fully and completely as natural persons, except that it shall never set up the plea of usury to any contract to which it shall be a party, in any court.

May survey and locate route.

SECTION 2. The said company by this act created, is hereby authorized and empowered to survey, locate, and from time to time alter, change and re-locate, so as not to materially change the route, and to construct and complete, perpetually to have, use and enjoy, maintain and operate the said railroad, with one or more tracks or lines, over and along the following route, that is to say: Beginning at some convenient point in the village of Manitowoc, in the county of Manitowoc, running thence westerly via the village of Menasha, in the county of Winnebago (or via the city of Appleton, or with a branch to said city) to the Mississippi river, at some eligible point near the city of St. Paul, in the state of Minnesota, and with the consent of the legislature of that state, to some convenient point in the said city of St. Paul.

SECTION 3. The company hereby created shall have the perpetual right, power and authority to transport, take and carry property and persons upon said roads by the power and force of steam, of animals, or of any mechanical or other power, or of any combination of them, and to receive and store any property in any of its depots or other buildings, and to make, construct, maintain and use all such switches, turnouts, side tracks and connecting tracks as it shall think necessary; and also to construct, erect, maintain and use all such depots, station houses, warehouses, car houses and shops, engine houses, and all other buildings, fixtures and things useful for the accommodation of said company and its roads, and those using the same; to purchase or manufacture and own rails, chairs, spikes, engines, cars, tenders and all other things necessary or useful for the construction or operation of a railroad, and to sell the same. And it shall also have power and authority to operate its said roads in connection with any and all other railroads which may cross, come up to or connect with the said road upon such terms as shall be mutually agreed upon by and between the said companies: *Provided*, that the said company in making any such contracts as last aforesaid, shall give no preference to one company over any other such company or companies last above mentioned, but all such companies shall be put upon the same equal terms; and whenever and so often as any such business connection, contract shall be made and entered into, the same shall be in writing, duly signed and sealed with the seals of the companies parties thereto, in triplicate, and when so executed and sealed, one copy thereof shall be filed with the secretary of state, whose duty it shall be to mark thereon the time of its reception, and carefully to preserve and keep the same in his office, open to the inspection of all persons; and the copy so filed with the secretary of state, is hereby declared a public record. No such contract shall have any force or effect in law unless such copy is filed with the secretary of state as aforesaid. Either of the companies being a party to any such contract, may be compelled by a mandamus to file with the secretary of state a triplicate copy thereof as aforesaid.

May transport goods, etc.

May connect with other roads.

SECTION 4. The company hereby created shall also have the right, power and authority to construct its said roads upon and along, across, under or over any public highway, or any private way, or road, street, plankroad or railroad, if the same shall be necessary; but the

May construct road over and along highways etc.

said company shall restore such highway, private way, or road, street, plankroad or railroad to its former state or condition, so as not to impair the usefulness of the same so far as the same can be done consistently with the rights and privileges hereby granted to the company hereby created. Said company shall have the further right, power and authority to erect, maintain and use all the necessary bridges for the use of its railroads over any streams of water or water-course, at such point or points of crossing the same as they may locate the said railroads, with all necessary abutments, piers or other structures or foundations.

May enter upon lands, etc.

SECTION 5. It shall be lawful for the company hereby created, and it shall have the right, power and authority, by its officers, engineers, agents, servants and workmen, to enter upon any land for the purpose of exploring, surveying, locating and determining the routes of said railroads; and when the said routes or any portion thereof shall be determined by resolution adopted by its board of directors, it shall be lawful for said company, and it shall have the right, power and authority, by its officers, engineers, agents, contractors, surveyors, servants and workmen, at any time to enter upon, take, possess, occupy and use any land along and including the line of said route, not exceeding two hundred feet in width. It shall also be lawful for said company, and it shall have the right, power and authority, at any time to enter upon, take, possess and occupy and use any other lands beyond said limits of two hundred feet, which the directors shall by resolution adopted by them, (a copy of which shall be recorded at the expense of said company in the office of the register of deeds in the county in which such lands are located,) declare to be necessary for the use of said company, for the purpose of erecting depot building, station houses, machine shops, freight houses, warehouses, engine houses, or buildings or fixtures of any kind, or ground about the same, for the convenient operation of the road, or for making drains, or giving proper direction to water courses, or of directing or changing the channel of water courses, or for the purpose of removing such substances and things as may endanger, obstruct or interfere with the free use of said road, or for the purpose of depositing earth, gravel, or stone, or for the purpose of obtaining earth, gravel, stone, timber or other material for embankments, structures or superstructures necessary to the construction, repair or renewal of said roads. Said company shall, however,

at such time and in such manner as is provided by and in this chapter and act, be liable to pay the full value of all earth, gravel, stone, timber and land which may be so as aforeiaid taken, possessed, occupied and used for any of the purposes aforesaid, which is the private property of either persons or corporations, which value (unless the owner thereof and said company shall agree as to the same) shall be ascertained and determined in the manner hereinafter provided; and whenever the same shall have been paid, tendered or deposited, as provided in this act, an estate in and to all and every such lands in fee simple, absolute forever, shall be and become vested in said company by virtue thereof, and of the provisions of this act, and by the same means a complete title shall vest in said company in and to all such earth, gravel, stone and timber; and whenever said company shall deem that such property or any part or portion of such property, shall no longer be necessary for the purposes for which the same were taken, it is hereby authorized and empowered, by deed or other instrument in writing, to lease or sell the same or any part thereof. Compensation for use of lands

SECTION 6. On the completion of said road, or any part thereof, it shall be lawfull for said company, and it is hereby authorized and empowered, to demand and receive such sum or sums of money for the transportation of persons and of property, and for the storage of property, as it shall from time to time deem reasonable. May fix rates of transportation.

SECTION 7. Said company hereby created shall also have full power and authority to transport persons and property in boats, vessels, barges and other water-crafts on any of the navigable waters which its said railroad or roads may run to or connect with, and to receive and collect reasonable compensation for the same, and for that purpose may build or purchase, own and use such boats, vessels, barges and other water-crafts as it may require. May transport passengers and property on boats.

SECTION 8. The company hereby created shall be capable in law of taking and holding any land granted to it by the government of the United States or of this state, or by individuals, to aid in the construction of its road, and may also pledge, mortgage or otherwise dispose of all their right, title, and interest in and to said lands, and in any other estate, real, personal or mixed, of which they may be seized at the time of the execution of such mortgage, or which they may acquire subsequently thereto, in such manner and on such terms as the directors may think proper. May receive grant of lands.

Board of directors.

SECTION 9. All the affairs and business of the company hereby created shall be conducted, managed and carried on by a board of five directors, who shall be stockholders of said company; and the board of directors is hereby invested with power and authority to conduct, manage and carry on the affairs and business of said company, and also with such power and authority as will carry or promote the carrying into full and complete effect the meaning and intent of this act. The directors, after the first board, shall be chosen by the stockholders of the company by ballot annually, and shall hold their respective offices one year. The annual meeting of the stockholders for the election of directors, shall be held at the village of Menasha, in this state, on the first Monday of May, in each year, unless the board of directors shall by resolution direct that such election be held at some other place on the line of its road, and within this state. At all meetings of the stockholders, the votes of the stockholders may be cast in person or by proxy duly authorized, and every stockholder shall be entitled to one vote for each and every share of stock held by him; and in all elections for directors, those stockholders, equal to the number of directors to be elected, having the greatest number of votes shall be deemed and declared duly elected directors. The elections shall be conducted in such manner as shall be prescribed by the by-laws, or by resolution of the company. If for any cause an election of directors should not be had at the time when, by the provisions of this act, it should be had, the same may be held at such other time as shall be fixed by the by-laws of the company, and until such election be had the directors of the preceding year shall continue to act, and the corporation shall not forfeit or lose any of its privileges, franchises or immunities by reason of the irregularity or want of any such election.

Their powers.

SECTION 10. A majority of the board of directors shall constitute a quorum for the transaction of any business, except as in this act otherwise provided. They shall meet at such times and places, and be convened in such manner, as they shall prescribe in the by-laws. They may fill any vacancy which may occur in their own board. They shall appoint one of their number to be president and one vice-president. The term of service of the president and vice-president shall be one year, and until a new election of directors. The president, when present, shall preside at all meetings of the directors and stockholders, and in case of his absence

the vice-president shall discharge the duties of president, and in case of the absence of the president and vice-president, the directors present may appoint a president *pro tem.*, who shall discharge the duties of president during the absence of the president and vice-president. The board of directors may appoint a secretary, treasurer, chief engineer, superintendent, attorney, and such other officers and agents as they may find necessary, fix their compensation and duties, and demand adequate security for the discharge of their respective duties and trusts, and remove the same at pleasure. The directors shall have power to determine the amount of the first and all other installments by them ordered to be paid or assessed from time to time on stock subscriptions, and to sell and dispose of the unsubscribed stock of said company, in such manner and on such terms as will best secure the speedy completion of the railroad hereby authorized to be constructed. The directors shall have power to require the payment of stock by installments, from time to time, in such amounts as may be necessary for the operations of the company; and upon default in the payment of any such installment or installments upon any share or shares of such stock, for thirty days after personal notice shall have been given by the board of directors to the stockholders, the said board of directors shall have power to declare such share or shares on which default may be made, forfeited to the use of the said corporation, and the stockholders who shall have held the same, shall thereupon absolutely forfeit the same, and all sums paid thereon, to the use of the said corporation. The board of directors shall have power, from time to time, to require payment of installments of the capital stock of said corporation, at their discretion, until the stock shall have been fully paid; and upon default in the payment of any such installment upon any share or shares of the said capital stock, the board of directors shall have power to enforce the collection or payment of such installment or installments against the stockholder or stockholders making such default or owning such stock, and shall have the right to apply toward the payment of such installment or installments any dividend or other moneys accruing to such stockholder or stockholders in the hands of the said corporation: *Provided*, that no installment called in on such stock at any one time, shall exceed ten dollars on each share, and that no installment shall be called by the directors without giving at least thirty days' notice thereof in a newspaper published in

May appoint officers, etc.

the village of Manitowoc, and also in a newspaper published in the village of Menasha, if there be such newspaper published. The directors shall have power to establish and regulate tolls and charges, not inconsistent with the provisions of this act, for the transportation of freight and passengers, and for the storage of freight, and to collect all such tolls and charges, and to make such covenants and agreements with any person or persons, co-partnership or corporation whatever, as the construction and management of the road and conveniences and interests of the said company may require. The directors shall have power and authority to make and establish such by-laws as they may think proper respecting the property, concerns, affairs, business, stock and government of the corporation created by this act, and the powers and duties of its officers and committees, and its officers and committees may exercise all the powers which may be prescribed by such by-laws; and the directors may make such other rules, regulations and orders as they may think proper, but no such by-laws, rules, regulations or orders shall be inconsistent with this act, or with the constitution or laws of this state; and the directors shall have power, in general, to superintend and direct all the operations, receipts, disbursements and all other affairs of said company.

Special meetings.

SECTION 11. Special meetings of the stockholders may be called by order of the board of directors, or by stockholders holding one-fourth of the capital stock, on twenty days' notice given to the stockholders, specifying the object of the meeting, but no business shall be transacted at any special meeting unless a majority of the stock then issued shall be represented in such meeting.

May borrow money and issue bonds.

SECTION 12. The company hereby created is hereby authorized and fully empowered, in its corporate capacity, to borrow any sum or sums of money from any person or persons, corporation or body politic of any kind, and for any rate of interest which may be agreed upon by and between said company and any party of whom such money may be obtained; and to make, execute and deliver in or out of this state, all necessary writings, notes, bills, bonds, mortgages and all other papers or securities, in amount or kind as may be deemed expedient by said corporation, in consideration of any such loan, or in discharge of any liabilities they may incur in the construction, repair, equipment or operating of the said road, or in any of the transactions of the said company

authorized by this act; and the said company is hereby authorized, in its corporate capacity, to make, execute, issue and deliver its bonds or obligations in such an amount as the directors shall think best for the interests of said company; and the directors of said company are hereby authorized and empowered to prescribe the sum or sums for which each of said bonds shall be issued, and the time or times or place or places when and where the principal and interest of the same shall be payable, and whether payable to order or bearer, or how otherwise negotiable, the rate of interest which said bonds shall bear, and the manner and form in which the same and the interest coupons annexed to them shall be executed. And to secure the payment of any or all of said bonds, the said company is hereby authorized and empowered, in its corporate capacity, to make, execute and deliver a mortgage or mortgages, or deed or deeds of trust, upon the whole or any part of its railroad, constructed or authorized to be constructed, and upon any other or all of its estate, real, personal or mixed, in possession or expectancy; and said company is also hereby authorized and empowered, in and by such mortgage or deed of trust, to confer upon the trustee or mortgagee full and ample powers to enter into and upon and to take possession of, have, use and enjoy or to sell and dispose of, the whole or any part of said railroad or estate, real, personal or mixed, together with the functions appertaining to such railroad, and all corporate and other franchises, rights and privileges of the said railroad company, or to take up or remove any of the fixtures connected with said railroad, and the directors of said company are authorized and empowered to prescribe all matters relating to the form and terms of any such mortgage or deed of trust, and of its execution and delivery; and they are authorized and empowered to provide for the annual payment to such trustee or receiver as they shall appoint, a certain sum to create a sinking fund, with which to pay off and discharge, at or before maturing, any or all of the bonds by them authorized to be issued and also to provide the manner in which such trustee or receiver shall pay out or dispose of said sinking fund, and to authorize him to designate by lot, or in any other suitable manner, the bond or bonds to the payment of which said sinking fund, or any part of it, shall be applied; and the said company is hereby fully authorized and empowered, by its agents or brokers or otherwise, either in or out of this state, to sell, loan, pledge, hypothecate or otherwise

to dispose of any or all of the aforesaid bonds hereby authorized to be issued, at par, or at any price greater or less than par, and for such sum or sums as they shall think proper; and the said company and its directors, officers and agents, are hereby authorized and empowered to have, exercise and enjoy all the rights, privileges and powers herein conferred upon them, respectively.

Shall pay for lands.

SECTION 13. The company hereby created shall for all and every the lands and property which it shall appropriate, take, possess, occupy or use, pay the full and actual cash value thereof at the time and in the manner herein provided; and such value shall be ascertained, fixed and determined by mutual agreement between the said company and the owners of such land and property, respectively, or by and through the medium and appraisement and determination or award of commissioners appointed as hereinafter provided.

When cannot agree, how fix damages.

SECTION 14. When the said corporation shall not agree with the owner or owners of such required land for the purchase thereof, or as to the compensation to be paid therefor, or when by reason of the legal incapacity or absence of such owner or owners, no such agreement can be made, then and in that case it shall be lawful for any judge of the supreme court, circuit or county courts of this state, on application of the said company, or the owner or owners of any such land, and at the cost and charge of said company, to appoint three disinterested persons residing in the county through which the said road runs, whose duty it shall be to view and examine the lands so taken, with the buildings and improvements, if any, thereon, and to estimate the value of the lands so taken or required by said company, and all the damages which the owner or owners thereof shall sustain, or may have sustained by reason of the taking of the same for the construction and use of said road or works appertaining thereto. And it shall be the duty of said company, or of the owner or owners aforesaid, as the case may be, to give three weeks' notice of their application to the judge of the supreme, circuit or county courts for the appointment of said commissioners, to be published for three successive weeks in a newspaper published, if there shall be any, in each of the counties through which said road may be located, and the affidavit of the publisher or printer shall be sufficient legal evidence of such publication; and the persons so appointed, before entering upon the discharge of such duties, shall take an oath before some justice of the peace, or other person

Notice of application for appointment of commissioners

competent by law to administer oaths, faithfully and according to the best of their ability, to examine the lands so taken or required by said company, and impartially to estimate and appraise the value of the same and the damage or injury which the owner or owners thereof shall have sustained or may sustain by reason of the taking and use thereof by said company. Whereupon such commissioners shall proceed to examine the premises, and estimate the value of such land and the amount of damage, and they, or a majority of them, shall make a report in writing of such valuation, under their hands and seals, to the circuit court of the county where the land lies, and shall return the same within ninety days after their appointment to the clerk of the circuit court of the county in which they reside, and it shall be the duty of the said clerk to immediately file the same; and in case no appeal shall be made within thirty days after the filing of the said report, as hereinafter provided, then the said clerk shall record the same, at the expense of the said company, and judgment of the said court shall be entered thereon, on motion of either party, at any term of the said court: *Provided*, that either party may appeal to said court, within 30 days after said report shall have been filed in the clerk's office, and such appeal shall be tried in the same manner as other issues are tried in said court, and the jury impanneled to try the same shall find the value of the land so taken or required by said company, and the damages which the owner or owners thereof shall have sustained by the taking of the same, and the judgment of the said court shall be entered accordingly: *Provided, also*, that it shall not be lawful for the said commissioners or said court to proceed in the assessment of damages, or in the valuation of any lands or materials as aforesaid, in the absence of the owner or owners, his, her or their agents or attorneys, unless it shall be shown to them by competent testimony that the said owner or owners shall have had at least five days' notice of the time and place at which such assessment or valuation was to be made, or that the said owner or owners are absent from the said state of Wisconsin; and if the said owner or owners shall be minors, or *non compos mentis*, or absent from the state, the service of notice may be made on the guardian or trustee, if there be any, or in such manner as the court may direct: *Provided, also*, that upon the making and filing of the report as aforesaid, and payment or legal tender of the amount of any valuation or appraisal specified therein, to the

How commissioners proceed

Appeal—when taken and how tried.

owner or owners of any such lands, his, her or their legal representatives or payment thereof into the circuit court of the county in which such land shall be situated, for the owner or owners thereof, the said company, their agents or the contractor for making or repairing said railroad, may immediately take and use the same, without awaiting the issue of any appeal brought thereon; *and provided, also*, that in case of an appeal as aforesaid by the owner or owners of such land, the said company, immediately on notice of the perfection of such appeal, shall pay into the court, to abide the judgment therein, the amount awarded by such commissioners; and in case of any appeal by the company, it shall be the duty of such company to execute a bond with sufficient surety, to be approved by the court, conditioned to pay any judgment that may be rendered therein, and to abide by the order of the court in the premises. Such bond shall be filed at the time of entering the appeal, and in case of neglect or refusal, unless further time so to do shall have been granted by the court, the appeal may be dismissed on motion. Whenever any judgment shall have been entered as herein provided, for the value of any lands, or for any damages for taking and using the same and the amount specified in such judgment shall have been paid or tendered to the owner or owners of such lands, his, her or their legal representatives, the said company shall be entitled to the estate and interest in the same, as fully as if it had been conveyed in fee simple; and if such valuation be not received when tendered, it may at any time thereafter be received, or may be collected from said company by action at law, at the cost and expense of the person or persons entitled to the same: *Provided*, that the costs of any proceedings and judgments specified in the last preceding section, shall be taxed by the court and paid by such company, except in cases when upon appeal the verdict of the jury shall be for the same or for a less sum than that reported by said commissioners.

Capital stock.

SECTION 15. The capital stock of the company hereby created shall in the first instance be five millions of dollars, which capital stock may be increased to a sum not exceeding ten millions of dollars.

SECTION 16. The capital stock of the company hereby created shall be and is hereby divided into shares of one hundred dollars each.

First directors.

SECTION 17. The persons named as corporators in the second section of this act, are hereby made directors of

said company, and shall hold their offices until the first Monday of May, 1869, and until their successors are duly elected.

Notice of election of directors.

SECTION 18. It shall be the duty of the president and secretary of said company, or one of them, to give at least twenty days' notice of the meeting of stockholders to elect directors, to be held annually on the first Monday of May, of each year, commencing in the year 1869.

Restriction of time.

SECTION 19. The railroad of said company shall be completed within 20 years from the first day of May, 1869: *Provided, however*, that nothing herein contained shall be so construed as to deprive said corporation of any of the rights, privileges and franchises herein conferred, over such portion of said railroad as may be completed by said company before the expiration of the term herein specified.

Property for public use.

SECTION 20. All property which the company hereby created is authorized to appropriate, take, possess, hold or use, by making payment therefor as in this act provided, is hereby declared to be taken for public use, so soon as the company shall so appropriate, take, possess, hold or use the same.

Shall fence road.

SECTION 21. The company hereby created shall fence its railroads in parcels, as it shall from time to time operate the same, within one year from the time it shall commence the operating any and every such parcel until the whole of said railroads are in a good, proper, substantial and workmanlike manner fenced throughout the entire extent of the line thereof.

SECTION 22. It is hereby declared that in the judgment of the legislature of this state, the objects of the corporation hereby created cannot be attained under the general laws.

May purchase other road.

SECTION 23. The said company shall also have the power to purchase, lease, take, hold and own in its corporate name, all or any of the property, estate, rights, privileges and franchises of the Manitowoc and Mississippi railroad company granted and conveyed by Azariah C. Flagg and James Homer, trustees, to Jacob Leips, by deed bearing date, the twenty-eighth day of April A. D 1859, and for that purpose may make such contracts of purchase or lease of the said property, rights and franchises or any part thereof as may be agreed upon by and between the said company and the said Jacob Leips, his grantees or assigns, and on the due execution and delivery by the said Jacob Leips, his grantees or assigns, of a

conveyance of all and singular the line of roads, property, rights, privileges and franchises by him acquired through the conveyance aforesaid to the said corporation hereby created, all the right, title and interest of the said Jacob Leips and all the right, title and interest which the said Manitowoc and Mississippi railroad company had in or to the said property, rights, privileges and franchises at the date of the said conveyance thereof by the said Azariah C. Flagg and James Homer, shall become vested absolutely and completely in the said corporation hereby created, free from any lien or incumbrance created or suffered thereon subsequent to the date of the trust deed executed by the Manitowoc and Mississippi railroad company to the said Azariah C. Flagg and James Homer, pursuant to which the said conveyance hereof was made by the said Azariah C. Flagg and James Homer to the said Jacob Leips.

Public act.

SECTION 24. This act is hereby declared to be a public act, and the same, immediately after the passage thereof, shall be printed by the state printer, and shall take effect and shall be in full force from and after its publication.

Approved March 6, 1868.

CHAPTER CCLV.—P. & L. LAWS, 1869.

AN ACT authorizing the Manitowoc and Minnesota railroad company to build a branch road to the city of Green Bay.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

May build branch railroad

SECTION 1. The Manitowoc and Minnesota railroad company is hereby authorized to locate, build, operate and maintain a branch railroad from some point on the main line of its road at or near Reedsville in the county of Manitowoc, to connect with the Green Bay and Lake Pepin railway at said point in the city of Green Bay, and upon such terms as shall be agreed upon between the said companies, and in locating, building, operating and maintaining such branch road, the said company shall have all the rights and privileges and be subject to all the limitations and restrictions conferred or imposed upon said company by its acts of incorporation.

SECTION 2. This act shall take effect and be in force from and after its passage and publication.

Approved March 6, 1869.

CHAPTER CCCII.—P. & L. Laws, 1869.

AN ACT to authorize the Manitowoc and Minnesota railroad company to construct a branch railroad through the county of Calumet to the city of Fond du Lac.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

May construct branch.

SECTION 1. The Manitowoc and Minnesota railroad company is hereby authorized to locate, construct and operate a branch road from some point on its main line, running through the county of Calumet to the city of Fond du Lac, or to such point of intersection with the railroad of the Sheboygan and Fond du Lac railroad company as may be agreed upon between the two said companies; that all the provisions of chapter 342 of the private and local laws of 1868, entitled "an act to incorporate the Manitowoc and Minnesota Railroad Company," are hereby made applicable to the locating, constructing and operating of said branch road.

SECTION 2. This act is declared to be a public act, and shall take effect and be in force from and after its passage.

Approved March 8, 1869.

CHAPTER CCCCLXXVI.—P. & L. Laws. 1871.

[*Published April* 5, 1871.]

AN ACT to extend the provisions of chapter 79 of the revised statutes, entitled "of railroads," to the Manitowoc and Minnesota Railroad Company, and authorizing a branch road.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

May exercise provisions of the statutes, and build branch.

SECTION 1. That the Manitowoc and Minnesota Railroad Company shall have the right, and is hereby authorized, to use and exercise all or any of the powers, franchises and immunities mentioned in and conferred upon railroad companies by chapter 79 of the revised statutes, entitled "of railroads," and may also construct and operate a branch railroad from some

point on its main line of road in the city of Manitowoc, in Manitowoc county, to the village of Two Rivers, in said county.

SECTION 2. This act is hereby declared a public act, and as such shall be immediately published in the official state paper, and shall take effect from and after its passage.

Approved March 24, 1871.

ARTICLES OF CONSOLIDATION

BETWEEN THE

Wisconsin Central and the Manitowoc & Minnesota Railroad.

I

Articles of consolidation Wisconsin Central and Manitowoc & Minnesota, July 1st, 1871.

Articles of consolidation made and entered into this 1st day of July, A. D. 1871, between the *Wisconsin Central Railroad Company*, a corporation existing under, and by virtue of, the laws of the state of Wisconsin, party of the first part, and the *Manitowoc and Minnesota Railroad Company*, a corporation existing under, and by virtue of, the laws of said state, party of the second part.

WHEREAS, The said parties are authorized by acts of the legislature of the said state to effect a union of their respective roads and properties and to form by consolidation of their corporate rights, one company, and have agreed so to do upon the terms and conditions hereinafter mentioned and contained.

Now therefore, this agreement *witnesseth*, That the said Wisconsin Central Railroad Company, party of the first part, and the Manitowoc and Minnesota Railroad Company, party of the second part, do hereby mutually agree to consolidate, and do hereby unite, combine and consolidate, all and singular, the rights, privileges, franchises, immunities and property of the parties respectively into one company, to be hereafter known and designated by the corporate name and title of the Wisconsin Central Railroad Company, under and pursuant to the laws of the state aforesaid, which consolidated com-

The two companies to be called the Wisconsin Central, with all the powers, &c., of both.

pany hereby formed shall henceforth have and possess all and singular the rights, powers, franchises, immunities, privileges, lands and property which are, or have been heretofore conferred by law upon, or acquired by, said parties respectively.

And in pursuance of the provision of the charters, enactments, and laws of the state aforesaid, the said parties do hereby prescribe the terms and conditions of the said consolidation, and do respectively agree thereto and to the mode of carrying the same into effect, which terms and conditions are as follows, to-wit:

Terms of consolidation as follows:

Article First: The number of directors of the consolidated company hereby formed shall be nine, unless a different number shall be ordered in pursuance of law hereafter enacted. The first election of directors shall be held on the day upon which the election of directors of the said party of the first part is now provided to be held by the by-laws of said party of the first part, and in the meantime and until such election shall be had, *George Reed*, *Martin Wadleigh* and *Curtis Reed*, present directors of the party of the first part, and *Gardner Colby* and *Samuel Gould*, present directors of the party of the second part, and *Charles L. Colby* and *Elbridge G. Roberts*, of the city of New York, *Elijah B. Phillips* of the city of Chicago, state of Illinois, and *E. E. Barney*, of Dayton, state of Ohio, shall be directors of the consolidated company, and *Gardner Colby* shall be and remain the *president; George Reed* shall be and remain the *vice-president* and general solicitor; *Samuel H. Walley*, of Boston, Massachuesetts, the *treasurer;* and *Frank W. Webster*, the *secretary* of the said consolidated company, and *Gardner Colby*, *George Reed* *Elijah B. Phillips*, shall be and remain the *executive committee*, and such officers and committee may exercise the present powers of the officers and executive committee of the party of the first part in respect to the joint property and business until the election of directors of the said consolidated company shall be held as hereinbefore provided.

Nine directors.

First election of.

Temporary officers.

Powers of.

Article Second: The vice-president may also exercise the powers conferred upon the president by the by-laws of the company, party of the first part hereto, and by resolutions of its board of directors heretofore adopted in relation to the survey and location of its lines of road, to the procuring of the right of way and depot grounds, and to the obtaining from persons or parties and from municipal or other corporations, aid towards or in con-

Vice-president —authority of.

sideration of the construction of its roads or portions thereof.

Vacancies, how filled.

Article Third: When any vacancy shall occur by the resignation or death of any of the aforementioned directors, officers or committee, the same may be filled by order of the majority of the board of directors remaining at a meeting duly called as provided by the by-laws of the company.

By-laws, &c., of Wis. Cen. to govern, unless repugnant to this agreement.

Article Fourth: All the by-laws, rules and regulations of the party of the first part are to remain in force until duly changed or modified, and to be obligatory so far as applicable and not repugnant to the provisions of this agreement.

Seal of Wis. Cen. to be used.

Article Fifth: The common seal of the consolidated company shall be the seal now used by the party of the first part hereto, unless the same shall be hereafter changed as authorized by law.

All liens, and rights of creditors pre-served.

Article Sixth: All rights of creditors and all liens upon the property of either of the said corporations, parties hereto, existing at the date of this agreement shall be and are hereby declared to be preserved, unimpaired, by anything herein contained; and all just debts, guarantees and liabilities existing against either of the parties hereto shall be and are hereby assumed and agreed to be provided for, paid and discharged by the consolidated company hereby formed.

Articles in force at once.

Article Seventh: This consolidation shall take effect and go into operation immediately upon the due execution of these articles.

In testimony whereof, the said parties of the first and second parts have caused their respective common and corporate seals to be hereunto affixed and the same to be signed by their respective presidents on the day and year first above written.

[L. S.] GEO. REED, President
Wisconsin Central Railroad Company.

[L. S.] GEO. REED, President
Manitowoc & Minnesota Railroad Company.

Date of filing.

Filed in the office of the secretary of state of the state of Wisconsin on the 10th day of July, A. D. 1871.

CHAPTER CXXVI.—Gen. Laws 1869.

[*Published March* 12, 1869.]

AN ACT to authorize certain counties, towns, cities and villages to aid in the construction of the land grant railroad from Portage City and from Doty's Island to Lake Superior.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

May levy tax to aid railroads.

Section 1. It shall be lawful for the proper officers of any county through any portion of which any part of the railroad of the Portage and Superior, or of the Winnebago and Superior railroad company, or of the company consolidated by the two said companies from Portage City to Lake Superior, and from Doty's Island to Lake Superior shall run, or any town or incorporated city or village in such county, to levy a tax upon all the taxable property in such county, town, incorporated city or village, to aid in the location and construction of any portion of such road, and for the purchase of right of way and depot grounds, and for like purposes, to issue the bonds of any such county, town, incorporated city or village, in such sum or sums, and upon such terms and conditions as shall be agreed upon by and between such county, town, incorporated city or village and the said Portage and Superior railroad company, or the said Winnebago and Superior railroad company, or any railroad company which may be consolidated by or grow out of the two said companies; but no such tax shall be levied nor bonds issued by any such county, town, incorporated city or village, unless a majority of the legal voters of such county, town, incorporated city or village, voting on the question, shall first have voted in favor of such tax or the issuing of such bonds, in the manner hereinafter provided.

Companies may make propositions for aid.

Section 2. Whenever either of said railroad companies shall require aid from any such county, town, incorporated city or village, it shall make and deliver to the clerk of the board of supervisors of such county, the town clerk or clerk of such incorporated city or village, as the case may be, a definite proposition in writing, signed by the president or secretary of said railroad company, and sealed with the common seal of said company, which proposition shall contain a distinct statement of the amount of money or bonds desired, and the terms and conditions and considerations upon which the same

will be required to be paid and delivered to said railroad company. Upon receiving such definite proposition, the clerk of the board of supervisors of such county, the town clerk or clerk of such incorporated city or village, as the case may be, shall within ten days, publish or cause to be published, a notice of an election to be held by the legal voters of such county, town, incorporated city or village, at the usual place or places of holding elections in such county, town, incorporated city or village, and at such time as he may designate, which shall not be less than twenty nor more than thirty days from the date of such notice, which notice shall contain a full statement of the proposition made by said railroad company, and shall call upon the voters to deposit a ballot upon which shall be written or printed the words, "for the railroad proposition," or the words, "against the railroad proposition."

Clerk of board shall give notice of election

Form of ballot.

How election conducted.

SECTION 3. Such election shall be held and conducted in the same manner that other general elections in such counties, towns, incorporated cities or villages are by law required to be held and conducted, and the votes cast at such election shall be counted, canvassed and returned in the same manner as the votes at any such general election; and the canvassers shall make, certify, sign and deposit with the clerk of such county, town, incorporated city or village, a statement of the whole number of votes cast upon the question, as well as a statement of the number for the railroad proposition and of the number against the railroad proposition; and such certificate shall be conclusive evidence of the fact as to the number of votes cast for or against such proposition, and also of the fact that such election was regularly held and conducted according to law.

If majority in favor of proposition, bonds to be issued or tax raised.

SECTION 4. If a majority of the legal voters who shall vote on the question at any election to be held in any such county, town, incorporated city or village, in pursuance of the provisions of this act, shall, as indicated by the official returns of any such election, vote "for the railroad proposition," it shall be the duty of the proper officers in every such county, town, incorporated city and village, to cause said tax or bonds so voted to be raised or issued, and to be levied and collected or issued, and to be paid over or delivered to the said railroad company, on the performance by said company of the terms and conditions contained in such railroad proposition.

Who to constitute officers for purpose of this act.

SECTION 5. For the purpose of giving effect to the

provisions of this act, the proper officers of every county, town, incorporated city and village mentioned in this act, are hereby declared to be the chairman of the county board of supervisors and the clerk of the board of supervisors in each county, the chairman of the board of supervisors and the town clerk in each town, the mayor and city clerk of such incorporated city, and the president and clerk of each incorporated village.

How tax shall be levied.

SECTION 6. The tax authorized by this act shall be levied, assessed and collected in the same manner and form as other taxes are levied, assessed and collected in such county, town, incorporated city or village, and shall, when collected, be paid over to said railroad company by the treasurer of such county, town, incorporated city or village, as the case may be, on the certificate of the chairman of the board of supervisors of such county or town, or the mayor or president of such incorporated city or village, that the said railroad company has performed all the terms and conditions of the proposition under which such tax was voted, levied, assessed and collected; and such treasurer shall give additional bonds, to be approved in the usual manner, in double the amount of the tax so to be collected by him, conditioned that he will faithfully pay over such tax as required by this act; and the bonds hereby authorized to be issued, shall be issued by such officers, in such amounts and with such rate of interest, and upon such time, and delivered to such railroad company as shall have been agreed upon between such county, town, incorporated city or village.

How stock and bonds of railroad company may be disposed of.

SECTION 7. All shares or the capital stock of [or] the bonds or other securities given by said railroad company to any county, town, incorporated city or village, may be taken, held, sold and transferred by such county, town, incorporated city or village in the same manner and with like effect as can be done by individuals, and upon such terms and conditions as shall have been agreed upon between such county, town, incorporated city or village and the said railroad company.

Tax to pay interest on bonds to be levied.

SECTION 8. Whenever any county, town, incorporated city or village shall issue any bonds, it shall be the duty of the proper officers of such county, town, incorporated city or village to levy annually upon the property thereof, as aforesaid, a tax sufficient to pay the interest upon such bonds, and raise a sinking fund to pay the principal thereof, when the same shall become due and payable; and whenever any such county, town, incorporated city or village shall issue and deliver to such railroad compa-

ny, its orders on its treasurer for the payment of the amount of any tax, or part thereof voted, when the same shall become due, it shall be the duty of its proper officers to annually levy a tax sufficient to pay such orders when due, according to the terms thereof; and when any officers shall fail to levy any such tax, as hereby required, the holders of any such bonds or orders may apply to a circuit judge of the proper county in term time or in vacation, whose duty it shall be to issue forthwith his proper writ or order commanding such officers to levy, collect and pay over such tax to the persons entitled to the same.

SECTION 9. This act is declared a public act, and shall take effect and be in force from and after its passage.

Approved March 9, 1869.

CHAPTER XXXI.—GEN. LAWS, 1871.

[*Published March* 4, 1871.]

AN ACT to amend chapter 126 of the general laws of 1869, entitled "an act to authorize certain counties, towns, cities and villages to aid in the construction of the Land Grant Railroad from Portage City and from Doty's Island to Lake Superior."

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Amended.

SECTION 1. Section one [1] of chapter 126 of the general laws of 1869, entitled "an act to authorize certain counties, towns, cities and villages to aid in the construction of the Land Grant Railroad from Portage City and Doty's Island to Lake Superior," is hereby amended to read as follows: "Section 1. It shall be lawful for the proper officers of any county through any portion of which any part of the railroad of the Wisconsin Central railroad company shall run, or any town or incorporated city or village in or near such county, to levy a tax upon all the taxable property in such county, town, incorporated city or village, to aid in the location and construction of any portion of such road, and for the purchase of right of way and depot grounds, and for like purposes to issue the bonds of any such county, town, incorporated city or village, in such sum or sums, and upon such terms and conditions as shall be agreed

May levy a tax and issue bonds

upon by and between such county, town, incorporated city or village and the said Wisconsin Central railroad company, but no such tax (except a tax for the purchase of right of way and depot grounds, and for location), shall be levied, nor bonds issued by any such county, town, incorporated city or village, unless a majority of the legal voters of such county, town, incorporated city or village voting on the question shall first have voted in favor of such tax, or the issuing of such bonds in the manner hereinafter provided."

Change of name not to affect issue of bonds.

SECTION 2. All bonds or other securities which have heretofore been voted by any county, town, incorporated city or village, under the provisions of said chapter 126 of the general laws of 1869, to said railroad company under its name of Portage, Winnebago and Superior railroad company shall be issued and delivered to said company by and under its said name of Wisconsin Central railroad company, and such bonds or other securities so issued and delivered shall have in all courts and places and with all parties, the same force and effect as though the name of said company had not been changed, and the same had been issued and delivered to it under its name of Portage, Winnebago and Superior railroad company.

SECTION 3. This act is declared to be a general law, and as such shall be immediately published, and shall take effect and be in force from and after its passage.

Approved March 1, 1871.

CHAPTER CLX.—GEN. LAWS 1872.

[*Published April* 6, 1872.]

AN ACT to authorize the assignment and transfer of lands granted to aid the construction of railroads in this state.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

May sell lands.

SECTION 1. Any railroad company upon which any lands have been or shall hereafter be conferred to aid the construction of any railroad within this state, is hereby authorized and empowered to sell, assign and transfer the lands so conferred upon it, or any portion thereof, and all its right to receive the same, to any other rail-

road company which shall have by law the right to construct a railroad upon and along the line or any portion of the line upon which the lands so to be assigned are applicable under the congressional grant upon such terms and conditions as shall be deemed proper by the company making the assignment: *Provided*, that the company receiving such assignment and transfer shall be bound to construct the part of the line of railroad, to aid in the construction of which the lands were granted by congress, to which the assigned lands are applicable, according to the terms of the grant by congress; *and provided, further*, that nothing in this act shall be taken or construed to waive a substantial compliance with the conditions upon which the company or companies, heretofore authorized thereto, are entitled to acquire such lands.

Conditions of the assignments.

SECTION 2. Whenever any lands shall have been agreed to be transferred, as provided in section one of this act, the terms and conditions of the transfer shall be embodied in an agreement in writing between the contracting companies, which shall be executed in three parts, one of which shall be recorded in the office of the secretary of state, and each of the contracting companies shall hold one.

Terms to be put in agreement.

SECTION 3. This act shall take effect and be in force from and after its passage and publication.

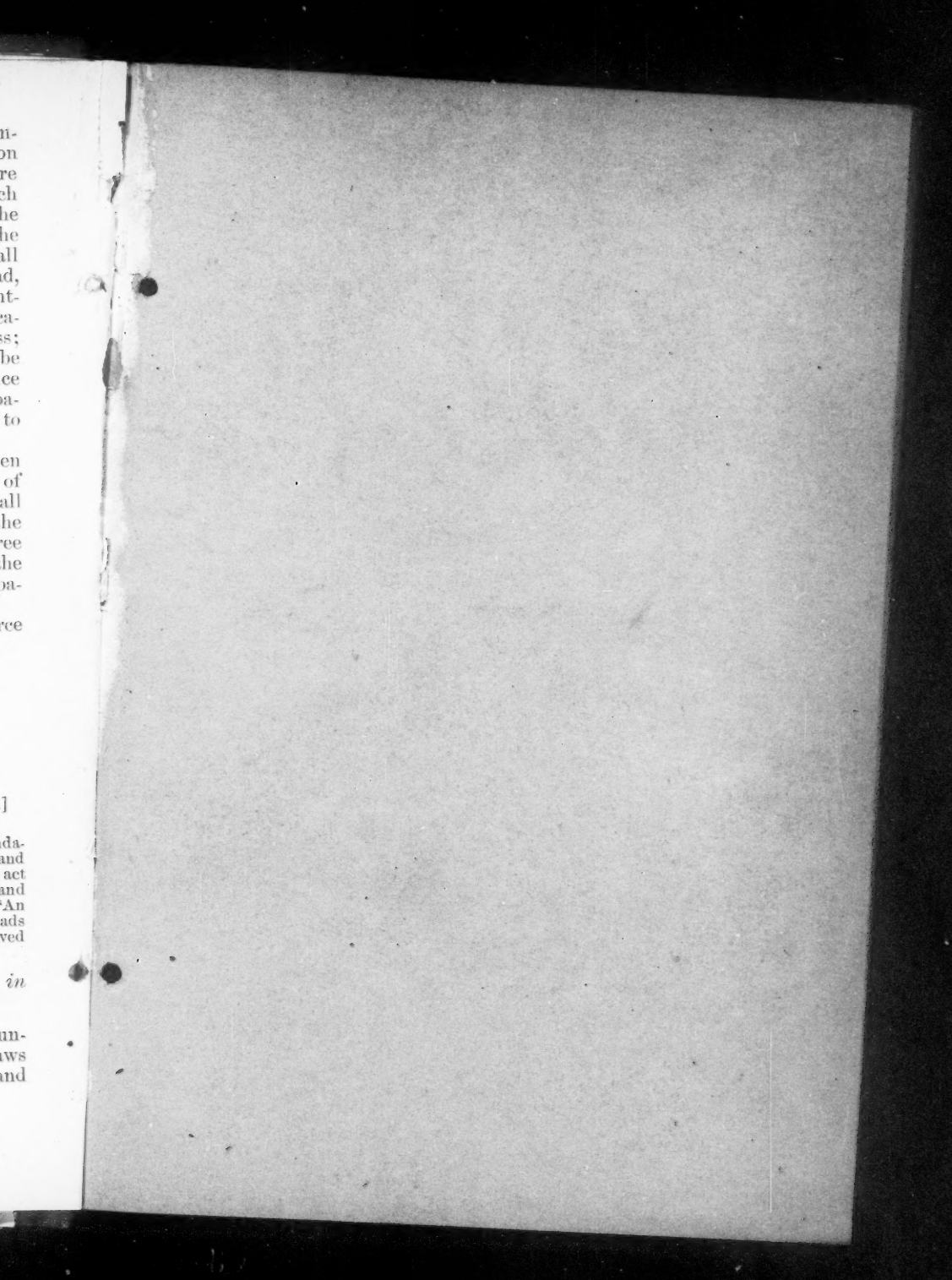
Approved March 25, 1872.

CHAPTER VI.—GEN. LAWS 1875.

[*Published February* 6, 1875.]

AN ACT relating to the Wisconsin Central Railroad, and amendatory of sections three and eight, of chapter three hundred and sixty-two, of the private and local laws of 1866, entitled "An act to incorporate the Portage and Superior Railroad Company and to execute the trust created by an act of Congress, entitled 'An act granting lands to aid in the construction of certain railroads in the State of Wisconsin,'" approved May 5, 1864—approved April 9, 1866.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Section three (3), of chapter three hundred and sixty-two (362), of the private and local laws of 1866, entitled "An act to incorporate the Portage and

Amending ch. 362 P. & L. L. 1866